UNITED
NATIONS

LOS

UNITED NATIONS
CONVENTION ON THE
LAW OF THE SEA

Distr.
LIMITED

LOS/PCN/L.103
7 July 1992

ORIGINAL: ENGLISH

PREPARATORY COMMISSION FOR THE
INTERNATIONAL SEABED AUTHORITY AND
FOR THE INTERNATIONAL TRIBUNAL FOR
THE LAW OF THE SEA
New York, 10-21 August 1991

PROGRESS REPORT OF THE CHAIRMAN OF THE PREPARATORY COMMISSION FOR THE INTERNATIONAL SEABED AUTHORITY AND FOR THE INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA ON THE WORK OF THE COMMISSION

CONTENTS

	Paragraphs	Page
INTRODUCTION	1 - 2	3
I. THE PREPARATORY COMMISSION	3 - 54	3
A. Implementation of resolution II	11 - 43	5
B. Plenary on the Authority	44 - 54	11
II. SPECIAL COMMISSION 1	55 - 85	14
A. Introduction	55 - 59	14
B. Consideration and resolution of issues	60 - 85	16
III. SPECIAL COMMISSION 2	86 - 117	23
A. Introduction	86 - 94	23
B. Application of resolution II, paragraph 12	95 - 100	27
C. Establishment of the organizational structure of the Enterprise	101 - 108	28

92-27954 3490e (E) 240792 270792

/...

CONTENTS (continued)

		Paragraphs	Page
	D. Development of policies and feasibility studies in preparation for the early entry into effective operation of the Enterprise	109 - 117	31
IV.	SPECIAL COMMISSION 3	118 - 157	33
	A. Introduction	118 - 122	33
	B. Discussion of working papers	123 - 157	35
V.	SPECIAL COMMISSION 4	158 - 204	41
	A. Introduction	158 - 162	41
	B. Status of work	163 - 204	42

INTRODUCTION

1. At its tenth session, held at Kingston, Jamaica, from 24 February to 13 March 1992, the Preparatory Commission for the International Seabed Authority and for the International Tribunal for the Law of the Sea decided that a progress report on the work of the Preparatory Commission since its inception should be prepared and issued as a report of the Chairman.

2. The present report is intended to assist the Preparatory Commission in deciding the course of its future work. It is also intended to provide Governments with a factual and succinct account of the work done by the Preparatory Commission during the past 10 years (LOS/PCN/L.102).

I. THE PREPARATORY COMMISSION

3. The Third United Nations Conference on the Law of the Sea established the Preparatory Commission for the International Seabed Authority and for the International Tribunal for the Law of the Sea and entrusted it with the task of preparing draft rules, regulations and procedures, as necessary, to enable the Authority to commence its functions. In paragraphs 5, 8, 9, 10 and 11 of resolution I on the establishment of the Preparatory Commission, the Conference clarified the type of procedures, arrangements, recommendations and studies which should be prepared by the Commission in order to fulfil its mandate referred to above.

4. In accordance with resolution II, paragraph 1, the Preparatory Commission for the International Seabed Authority and for the International Tribunal for the Law of the Sea was to be convened once the Convention on the Law of the Sea was signed or acceded to by 50 States. At the conclusion of the Third United Nations Conference on the Law of the Sea, held from 6 to 10 December 1982, the Convention received 119 signatories. Since the required number of signatories had been obtained, the Preparatory Commission began its work in March 1983. The first session of the Preparatory Commission was held from 15 March to 8 April 1983 and was resumed from 15 August to 9 September 1983. These two sessions were primarily devoted to the consideration of administrative arrangements, namely the structure of the Preparatory Commission, the function of its organs and the election of officers.

5. It was decided that the Preparatory Commission shall consist of the Plenary as the principal organ and the following Special Commissions as its main organs enjoying equal status:

(a) A special commission on the problems that could be encountered by developing land-based producer States likely to be most seriously affected by the production of minerals derived from the Area; this Commission was entrusted with the functions referred to in paragraphs 5 (i) and 9 of resolution I;

(b) A special commission for the Enterprise for the adoption of all measures necessary for the early entry into effective operation of the Enterprise; this Commission was entrusted with the functions referred to in paragraph 8 of resolution I and paragraph 12 of resolution II;

(c) A special commission for the preparation of rules, regulations and procedures for the exploration and exploitation of the Area (seabed mining code) (resolution I, paragraph 5 (g));

(d) A special commission for the Tribunal to prepare recommendations regarding practical arrangements for the establishment of the International Tribunal for the Law of the Sea (resolution I, paragraph 10) (LOS/PCN/27, annex).

6. Among the functions assigned to the Plenary were:

(a) The preparation of rules, regulations and procedures on the administrative, financial and budgetary matters pertaining to the various organs of the Authority (paragraph 5 (g) of resolution I);

(b) The implementation of resolution II governing preparatory investment in pioneer activities relating to polymetallic nodules (paragraph 5 (h) of resolution I);

(c) The preparation, consideration and adoption of the final report referred to in paragraph 11 of resolution I incorporating therein the results of deliberations, on all matters within its exclusive competence and on all matters within the competence of its Special Commissions and other subsidiary bodies as contained in the reports submitted to it by them for the presentation of the final report by the Chairman at the first session of the Assembly of the International Seabed Authority (LOS/PCN/27, annex).

7. A General Committee was established having as one of its main functions the task of acting on behalf of the Preparatory Commission as the executive organ for the administration of resolution II (ibid).

8. At the resumed first session the Preparatory Commission adopted its rules of procedures.

9. Under the rules of procedures membership of the Preparatory Commission was open to all States which have signed the Convention on the Law of the Sea or have acceded to it. Representatives of signatories of the Final Act of the Third United Nations Conference on the Law of the Sea may participate fully in the deliberations of the Preparatory Commission as observers but shall not be entitled to participate in the taking of decisions (see also para. 2 of resolution I).

10. The Preparatory Com ission was empowered to establish such subsidiary bodies as necessary for the exercise of its functions and to determine their composition and competence. During the course of its work the Preparatory

Commission established two such bodies. First, it created in 1986 a group of technical experts to determine whether the applications for registration as pioneer investors are in conformity with resolution II (LOS/PCN/L.41/Rev.1, annex). Secondly, in 1989 it established a Training Panel to make recommendations to the Preparatory Commission on the measures to be taken pursuant to the principles and policies established for the implementation of paragraph 12 (a) (ii) of resolution II regarding the training of personnel (LOS/PCN/SCN.2/L.6/Rev.1; LOS/PCN/SCN.2/L.7 and LOS/PCN/L.92).

A. Implementation of resolution II

11. Resolution II of the Third United Nations Conference on the Law of the Sea was adopted together with the Convention on the Law of the Sea on 30 April 1982. The intent of this resolution was to protect the substantial investments already made in the development of seabed mining technology, equipment and expertise. The Preparatory Commission was entrusted with the task of implementing resolution II which embodied the regime for the protection of pioneer investment. This function was assigned to the plenary of the Preparatory Commission (LOS/PCN/27).

12. Under resolution II applicants for pioneer investor status are required to ensure that areas in respect of which applications are made do not overlap one another. Any State which has signed the Convention and which is a prospective certifying State shall ensure before making applications to the Commission, that areas in respect of which application is made do not overlap one another. The States concerned shall resolve the conflicts by negotiations within a reasonable period. If these conflicts were not resolved by 1 March 1983, the prospective certifying States were to arrange for their submission to binding arbitration in accordance with UNCITRAL Arbitration Rule to commence not later than 1 May 1983.

13. Therefore, the first and by far the most important issue facing the Preparatory Commission with respect to the implementation of resolution II was the question of overlaps. At the second session of the Preparatory Commission (1984), the Chairman of the Preparatory Commission was requested to use his good offices to help the parties reach an agreement on resolving their conflicts of overlaps. At the summer meeting held at Geneva in 1984, an understanding on the procedure for conflict resolution among the first group of applicants for registration as pioneer investors - France, India and the Soviet Union was reached. It should be noted that the Soviet Union had submitted its application in July 1983, India in January 1984, and both France and Japan in August 1984. According to this understanding it was stated, inter alia, that all applicants agreed to meet on 17 December 1984 to exchange lists of coordinates in order to ascertain if there were any overlaps between the areas claimed in the applications submitted to the Preparatory Commission for registration as pioneer investors. If any overlap of claims were to be found between two or more applicants, the conflict should be resolved through negotiations (LOS/PCN/L.8).

14. In accordance with this understanding, on 17 December 1984, the four applicants met at Geneva to exchange lists of coordinates of the areas claimed by them. It was discovered that overlaps existed between the application areas of Japan and the Soviet Union and between those of France and the Soviet Union. These areas were all situated in the north-eastern part of the Pacific. India, whose application was in the Indian Ocean, had no conflict of overlaps with respect to its application area (LOS/PCN/L.19).

15. The three countries, France, Japan and the Soviet Union, held a series of meetings in order to resolve the conflicts of overlaps in the application areas (LOS/PCN/56). It was possible to resolve on a provisional basis the conflict of overlaps between Japan and the Soviet Union but that between France and the Soviet Union proved difficult to resolve. It was difficult to find a solution which would meet all the conditions set out in paragraph 3 (a) of resolution II, which provides that "Every application shall cover a total area which need not be a single continuous area, sufficiently large and of sufficient estimated commercial value to allow two mining operations", a part of which being reserved for the International Seabed Authority.

16. A period of intense negotiations ensued. Meetings of the four applicants were held at Geneva, Tokyo and finally Arusha in February 1986. At the Arusha meeting the four applicants submitted a set of proposals which constituted what became known as the Arusha understanding. This understanding dealt with two significant issues: (i) the resolution of conflicts due to overlaps and (ii) the allocation of mine sites to the first group of applicants and the designation of reserved areas for the Authority (LOS/PCN/L.34). This understanding introduced, inter alia, two new elements into the pioneer investor regime - the idea of applying paragraph 1 (e) of resolution II at the time when an application was being registered (prior relinquishment of areas) and the notion of self-selection of areas. It will be recalled that according to resolution II it was the Preparatory Commission and not the applicant which had to designate the part of the area to be reserved for the Authority and to allocate to the pioneer investor the pioneer area.

17. The Chairman conducted consultations on this understanding with all the interested groups: the first group of applicants, the potential applicants, the Group of 10, representing the Group of 17, and the Group of 11, also known as the Friends of the Convention. Finally, it was possible to put together an understanding which is contained in the statement on the implementation of resolution II of 11 September 1986 (LOS/PCN/L.41/Rev.1, annex).

18. This statement established the procedures and mechanisms for the registration of pioneer investors and the registration of the first group of applicants. It provided for the submission of revised applications by France, Japan and the Union of Soviet Socialist Republics and a timetable for meetings of the General Committee to consider these applications. It also provided for the creation of a group of technical experts. The function of this group was to determine whether the application was in conformity with resolution II and to submit their conclusions to the General Committee.

19. The statement incorporated the elements already mentioned in respect of the Arusha understanding. Thus, an applicant who had practical problems in resolving its conflicts with respect to overlapping claims with potential applicants was entitled to make voluntary relinquishment of parts of the application areas simultaneously with its registration as a pioneer investor. The relinquished areas were to be reserved to form part of the application areas of potential applicants qualified to apply as pioneer investors under resolution II, paragraph 1 (a) (ii), until the Convention enters into force. It also empowered each of the first group of applicants to receive areas of its own choice. In return they agreed to assist the Preparatory Commission and the Authority in the exploration of a mine site for the first operation of the Enterprise and in preparing a plan of work in respect of such mine site. The conditions and extent of this assistance were to be discussed and agreed to, following registration.

20. The interests of potential applicants were taken into account in that the statement provided for similar treatment to be given to potential applicants as that given to the first group of applicants, provided that potential applicants assumed similar obligations to those of the first group of applicants, and had submitted their applications before the entry into force of the Convention.

21. It was also agreed that any developing State has the right to apply as a pioneer investor under resolution II until the Convention enters into force. Likewise a group of Socialist States of Eastern Europe or a group of their state enterprises was also given the right to apply for one mine site as pioneer investors under resolution II until the Convention enters into force. It will be recalled that in order to qualify as a pioneer investor, the State or entity must have expended before 1 January 1983 an amount equivalent to at least US$ 30 million in pioneer activities, no less than 10 per cent of which had to be expended in the location, survey and evaluation of the application area (para. 1 (a) of resolution II). Under paragraph 1 (a) (iii), a developing country which has signed the Convention must have met this requirement before 1 January 1985.

22. At its summer meeting in 1987, the Preparatory Commission was informed that the first group of applicants and the potential applicants had concluded a comprehensive settlement of practical problems. This development ensured that all the applications for pioneer investment status would be considered by the Group of Technical Experts and the General Committee. Later that same year first India (17 August 1987) then France, Japan and the Union of Soviet Socialist Republics (17 December 1987) were registered as pioneer investors by the General Committee acting as the executive body of the Preparatory Commission.

23. Following the registration of the four pioneer investors in 1987, the Chairman of the Preparatory Commission during the course of the sixth session (1988) undertook consultations on the modalities of the implementation of the obligations of the registered pioneer investors and their certifying States. An informal consultative group was formed to deal with these issues which related, inter alia, to the following matters:

(a) Exploration in the area reserved for activities by the Authority (para. 12 (a) (i) of resolution II and para. 14 of LOS/PCN/L.41/Rev.1, annex);

(b) Annual fixed fee of US$ 1 million (para. 7 (b) of resolution II);

(c) Training of personnel (para. 12 (a) (ii) of resolution II);

(d) Registration fee (para. 7 (a) of resolution II);

(e) Transfer of technology (para. 12 (a) (iii) of resolution II);

(f) Periodic expenditures (para. 7 (c) of resolution II);

(g) Funds for the Enterprise (para. 12 (b) (i) of resolution II);

(h) Periodic reports (paras. 5 (b) and 12 (b) (ii) of resolution II).

[LOS/PCN/L.67/Rev.1]

24. These consultations continued during the summer meeting (1988) of the Preparatory Commission. At the seventh session of the Commission in 1989, these consultations were resumed. Then it became apparent that certain matters relating to the discharge of obligations, in particular an agreement on a programme of exploration required the assistance of the group of technical experts.

25. Accordingly the Group of Technical Experts was convened to prepare a comprehensive exploration plan from the first stages of exploration to the stage where a decision for exploitation could be taken. The Group of Technical Experts was also requested to assist the Preparatory Commission in matters relating to the training of personnel (LOS/PCN/L.77).

26. The reports of the Group of Technical Experts provided the basis for resolving the difficulties relating to the implementation of the obligations of the registered pioneer investors and their certifying States (LOS/PCN/BUR/R.5 and LOS/PCN/BUR/R.6). In the light of these reports of the group of technical experts and after further consultations, the Chairman submitted a revised version, dated 31 August 1989, of the paper he had already informally distributed on 3 March 1989. At the eighth session of the Preparatory Commission, held in Kingston in 1990, the issue was extensively discussed and substantial progress was made and during the summer meeting the General Committee, on behalf of the Preparatory Commission, unanimously adopted the understanding on the fulfilment of obligations by the registered pioneer investors and their certifying States (LOS/PCN/L.87, annex).

27. The four registered pioneer investors agreed to provide training pursuant to paragraph 12 (a) (ii) of resolution II in conformity with the training programme approved by the Preparatory Commission, taking into account the report of the Group of Technical Experts (LOS/PCN/BUR/R.6). The cost of such training shall be borne by the pioneer investors.

28. With respect to exploration the registered pioneer investors (France, Japan and the Soviet Union) undertook to carry out free of cost the preparatory work and stage I of the plan for exploration contained in the report of the Group of Technical Experts (LOS/PCN/BUR/R.5).

29. As regards stage II of the exploration plan, it was understood that "this will be agreed upon following the completion of stage I and the review of the results obtained, taking into account the decision of any pioneer investor to undertake stage II of the plan of exploration in the area allocated to it. The terms and conditions for such further exploration shall be agreed upon in accordance with resolution II, paragraph 12 (a) (i)."

30. Once these three pioneer investors have satisfactorily complied with the obligations concerning training and exploration, their duty under resolution II, paragraph 7 (b), to pay US$ 1 million per annum shall be waived as from the date of their registration.

31. It was agreed that India will undertake, if so requested, a programme of exploration in accordance with resolution II, paragraph 12 (a) (i), of one mine site for the Enterprise in the area reserved for the Authority in the Indian Ocean. India's obligation to pay the annual fixed fee of US$ 1 million was also waived "as part of the overall understanding".

32. Under this understanding the Group of Technical Experts, within three months of the deposit of the Convention's sixtieth instrument of ratification or accession, has to review the state of deep seabed mining and make an assessment as to when commercial production may be expected to begin. If the group concluded that commercial production will not take place for an extended period of time, the Preparatory Commission shall recommend to the Authority that the annual fixed fee should be waived for a relevant period (LOS/PCN/L.87, annex, para. 12).

33. It may be noted that on the adoption of the understanding, the Chairman stated:

(i) Should any agreement be made which would affect this understanding in any way, such adjustments as may be necessary shall be made to it;

(ii) The required date for the submission of a plan of work by each registered pioneer investor under resolution II, paragraph 8 (a), shall be reviewed in the light of the assessment of the Group of Technical Experts in accordance with paragraph 12 of the understanding.

34. At the 51st meeting of the plenary held on 31 August 1989, the Preparatory Commission adopted a training programme for the Enterprise (LOS/PCN/SCN.2/L.6/Rev.1). The plenary at its 55th meeting (1990) subsequently adopted the recommendations of Special Commission 2 on the implementation of the Preparatory Commission Training Programme.

35. On 22 August 1990 the Preparatory Commission received an application for pioneer investor status from China on behalf of the China Ocean Mineral Resources Research and Development Association (COMRA). At the ninth session (1991) of the Preparatory Commission the General Committee, having considered the report of the Group of Technical Experts on China's application (LOS/PCN/BUR/R.7), registered COMRA as a pioneer investor.

36. At the ninth session also, the Preparatory Commission received an application from Bulgaria, Cuba, the Czech and Slovak Federal Republic and the Union of Soviet Socialist Republics for registration of the Interoceanmetal Joint Organization as a pioneer investor. At the summer meeting of 1991 the General Committee, having considered the report of the Group of Technical Experts on this application (LOS/PCN/BUR/R.8), registered the Interoceanmetal Joint Organization as a pioneer investor. It may be noted that the Preparatory Commission decided to include Cuba in the list of States having the right to apply as pioneer investor. Cuba was not listed among the States referred to in paragraph 21 of the 1986 statement of understanding as having the right to apply for pioneer investment status (LOS/PCN/L.41, annex, para. 21).

37. At the summer meeting in 1991 the Chairman of the Preparatory Commission continued his informal consultations which he had begun at the ninth session on the implementation of the obligations of the registered pioneer investor, COMRA. The only issue then left to be resolved concerned the matter of similar treatment for future applicants.

38. At the tenth session of the Commission, the consultation on the implementation of the obligations of the registered pioneer investor, COMRA, reached a successful conclusion. The General Committee on behalf of the Preparatory Commission unanimously adopted on 12 March 1992 the understanding on the fulfilment of obligations by the registered pioneer investor and its certifying State, the People's Republic of China. In this understanding the obligation of COMRA, the registered pioneer investor, to pay the annual fixed fee of US$ 1 million was waived.

39. At this session meetings of the General Committee were held to monitor the implementation of the obligations of the registered pioneer investors. On 12 March 1992, the General Committee considered the report of the Group of Technical Experts on the Preparatory Work carried out by the registered pioneer investors India, IFREMER/AFERNOD, DORD and Yuzhmorgeologiya, in accordance with the understanding on the fulfilment of obligations (LOS/PCN/L.87, annex) and approved the recommendation therein.

40. In accordance with the 1986 understanding, the General Committee also received the periodic reports submitted by the registered pioneer investors and their certifying States and took note of them.

41. At this session the General Committee received the second report on the meetings of the Training Panel.

Future work

42. The Chairman of the Preparatory Commission intends at the 1992 summer meeting to undertake consultations on the modalities for the implementation of the obligations of the Interoceanmetal Joint Organization (IOM).

43. In more general terms as far as the implementation of resolution II is concerned the task of the Preparatory Commission is to continue to monitor the implementation of the obligations of the six registered pioneer investors and their certifying States as set out in resolution II, in the statement on the implementation of resolution II of 1986, the understanding on the fulfilment of obligations by the registered pioneer investors and their certifying States of 1990, and the understanding on the fulfilment of obligations by the registered pioneer investor, COMRA and its certifying State, the People's Republic of China.

B. Plenary on the Authority

44. Within the framework of the Preparatory Commission, the Plenary on the Authority was entrusted with the task of submitting recommendations concerning draft rules of procedure for the organs of the Authority, its internal administrative and financial management, relationship with other international organizations, in particular the United Nations, budgetary and Secretariat requirements. The provisions of resolution I, related to the work of the Plenary on the Authority, are contained in paragraph 5, subparagraphs (b), (c), (d), (e), (f) and (g) and provide the following:

> "5. The Commission shall:
>
> ...
>
> "(b) Prepare draft rules of procedure of the Assembly and of the Council;
>
> "(c) Make recommendations concerning the budget for the first financial period of the Authority;
>
> "(d) Make recommendations concerning the relationship between the Authority and the United Nations and other international organizations;
>
> "(e) Make recommendations concerning the secretariat of the Authority in accordance with the relevant provisions of the Convention;
>
> "(f) Undertake studies, as necessary, concerning the establishment of the headquarters of the Authority, and make recommendations relating thereto;
>
> "(g) Prepare draft rules, regulations and procedures, as necessary, to enable the Authority to commence its functions, including draft regulations concerning the financial management and the internal administration of the Authority."

45. The areas of responsibilities assigned to the Plenary on the Authority within the framework of the Preparatory Commission could be divided into the following three categories:

(a) Preparation of draft rules of procedure for the organs of the Authority;

(b) Preparation of draft agreements concerning the relationship of the Authority with the United Nations, the host country and the parties to the Convention on the Law of the Sea;

(c) Submission of recommendations concerning administrative arrangements of the Authority, its initial financial and secretariat requirements, as well as staff and financial regulations of the Authority.

46. The progress that has been achieved so far, with regard to each of these categories of issues is discussed below.

(a) Preparation of draft rules of procedure for the organs of the Authority

47. The Plenary on the Authority was established in its present form at the second session of the Preparatory Commission held in March-April 1984. It started its work with the examination of the draft rules of procedure of the Assembly and subsequently proceeded to the consideration of the draft rules of procedure of the Council, the Legal and Technical Commission, and the Economic Planning Commission. By the end of its summer session of 1988, the Plenary on the Authority had completed two readings of all the draft rules. Some provisions were left pending. No agreement has so far been reached with regard to these provisions of the draft rules which are related to financial and budgetary matters, decision-making on questions of substance, elections, participation of observers and subsidiary organs. In the course of discussions, the above provisions were identified as the so-called "hard-core" issues and the draft rules which pertain to these issues or are linked to them were set aside, pending consultations of the Chairman with the interested delegations. In response to a request the Secretariat published a document containing the text of all provisions in the draft rules of procedure of the Assembly, the Council, the Legal and Technical Commission and the Economic Planning Commission relating to these hard-core issues (LOS/PCN/WP.44). After the completion of the second reading of the draft rules of procedure of the Assembly, the Council, the Legal and Technical Commission and the Economic Planning Commission, at the request of the Chairman, the Secretariat also circulated the texts of the second revisions of such rules and indicated those rules that remained pending. These revised rules are contained in documents LOS/PCN/WP.20/Rev.2, LOS/PCN/WP.16/Rev.2, LOS/PCN/WP.31/Rev.2, LOS/PCN/WP.36/Rev.2, respectively.

48. It should be mentioned that in connection with the consideration of the draft rules of procedure of the Legal and Technical Commission, the Plenary on the Authority had, at first, proceeded to the examination of special procedures for the approval of plans of work and identified the main elements

of such procedures to be reflected in section VIII of the above rules. Subsequently, it was decided at the seventh session in Kingston in March 1989 that in order to avoid duplication, the rules of procedure of the Legal and Technical Commission should contain only a general provision and that particulars concerning such procedures would be spelled out in the Regulations on Prospecting, Exploration and Exploitation of Polymetallic Nodules in the Area.

49. In accordance with the decision of the Preparatory Commission, the Chairman has undertaken throughout all these years intensive consultations with the interested delegations in an attempt to resolve the pending issues in the draft rules of procedure of the organs of the Authority. The consultations have not been successful. The Chairman of the Preparatory Commission will continue to attempt to resolve these issues before the entry into force of the Convention.

50. In addition to the draft rules of procedure of the organs of the Authority, the Plenary also considered a proposal on the establishment and functioning of the Finance Committee, which originally emerged in the course of discussions of the draft rules of procedure of the Council. Having examined at its sessions in August 1991 in New York and in February-March 1992 in Kingston the latest working paper prepared on this subject by the secretariat (LOS/PCN/WP.45/Rev.1), the Plenary on the Authority reached an agreement on the sections concerning the establishment, nominations, elections, term of office, frequency of sessions, place of sessions and identified, as requiring further consideration, such sections as composition, functions and decision-making.

(b) Preparation of draft agreements concerning the relationship of the Authority with the United Nations, the host country and the Parties to the Convention on the Law of the Sea

51. In discharge of this assignment, the Plenary on the Authority has considered and decided to recommend to the Authority the texts of the draft Agreement between the International Seabed Authority and the Government of Jamaica regarding the headquarters of the International Seabed Authority and of the draft Protocol on the Privileges and Immunities of the International Seabed Authority. The Secretariat was requested to publish the final texts of these two instruments incorporating all of the changes.

52. In accordance with its programme of work, the Plenary on the Authority also considered the draft Agreement concerning the Relationship between the United Nations and the International Seabed Authority. At its tenth session in Kingston, which was held in February-March 1992, the Plenary succeeded in resolving almost all of the problems arising in connection with that Agreement. The only pending article relates to the reciprocal representation by the Authority and the United Nations in their organs. If discussions on this article are successful, the Plenary will complete the examination of the text of this Agreement at its session in August 1992 in New York.

(c) Submission of recommendations concerning administrative arrangements of the Authority, its initial financial and secretariat requirements, as well as staff and financial regulations of the Authority

53. Owing to the very nature of the administrative and financial arrangements, their consideration could have been initiated only relatively recently, since it would not have been possible to identify earlier with sufficient precision the initial requirements of the Authority in this field. The first and only paper submitted so far on this subject-matter, was presented at the session of the Preparatory Commission, held in August 1990 in New York. It was entitled "Administrative Arrangements, Structure and Financial Implications of the International Seabed Authority" (LOS/PCN/WP.51) and was aimed mainly at facilitating exchange of views between members of the Preparatory Commission. The Plenary on the Authority discussed this paper at the two subsequent sessions of the Commission. The outcome of these discussions is reflected in the respective parts of the reports on the work of the Plenary on the Authority at those sessions (LOS/PCN/L.92, paras. 15-20; LOS/PCN/L.97, paras. 12-19). According to these reports, it appeared from the debate that there was general agreement that the Authority should be both efficient and cost-effective and that its size and structure should meet the needs of the Authority during the initial period of its activities. Therefore, it was suggested during the debate that the structure of the secretariat of the Authority should reflect the concerns for efficiency and cost-effectiveness, taking into account the functions that the Authority will be called upon to perform in the initial stages. It was understood that whatever approach would eventually be chosen to achieve these goals, it should preserve the autonomous nature of the Authority. The administrative and financial arrangements of the Authority have been discussed in several sessions and the Plenary will devote more time to finalizing the consideration of these arrangements.

54. As far as the staff regulations and the financial regulations are concerned, the Plenary on the Authority has not yet considered these matters. In 1983 the Secretariat presented a Working Paper entitled "Suggested Tables of Contents for the Preparation of Draft Rules, Regulations, and Procedures by the Preparatory Commission" (LOS/PCN/WP.14) which contained, among other suggestions, an outline of staff rules and regulations. At its 1991 session in New York, the Plenary on the Authority instructed the Secretariat to prepare guidelines for the drafting of financial regulations of the Authority.

II. SPECIAL COMMISSION 1

A. Introduction

Mandate of Special Commission 1

55. In accordance with paragraphs 9 and 5 (i) of resolution I, the mandate of Special Commission 1 is to "undertake studies on the problems which would be encountered by developing land-based producer States likely to be most

seriously affected by the production of minerals derived from the [international seabed] Area with a view to minimizing their difficulties and helping them to make the necessary economic adjustment, including studies on the establishment of a compensation fund, and submit recommendations to the Authority thereon" (resolution I, para. 5 (i)).

56. The mandate of Special Commission 1 is of a somewhat different nature from that of the other organs of the Preparatory Commission in that it involves undertaking studies which would focus essentially on the potential impact of future seabed mining on the land-based production of the relevant minerals in developing countries, and making recommendations on the basis of the findings of such studies, rather than procedural preparation for the commencement of functions of institutions. In view of the uncertainties, which in recent years have become increasingly wide-ranging, with regard to when and to what extent seabed mining would occur in the future, the mandate of the Special Commission takes on an additional dimension.

Programme of work of the Special Commission

57. The Special Commission started its work during the second session of the Preparatory Commission (spring 1984). With respect to the programme of work to fulfil its mandate, as the Chairman pointed out, "in studying the problems of developing land-based producer States, it is necessary to know, first, which minerals would be produced from seabed sources; second, how the introduction of the minerals from this new source would affect the existing land-based sources; third, what would these effects be and which developing States would be affected; fourth, what problems or difficulties, in connection with these effects, these developing States would encounter; and finally, what could be done to minimize these difficulties" (LOS/PCN/L.2, para. 2). This logically structured framework is reflected in the programme of work adopted by the Special Commission at its first meeting (contained in LOS/PCN/SCN.1/1984/CRP.2), which listed five subject areas corresponding to the five areas of studies in the Chairman's statement above. A list of specific issues falling under each of the five subject areas were then identified in CRP.3, which constituted the detailed programme of work of the Special Commission. It was also the understanding of the Special Commission that "the recommendations (to the Authority) will be the end results of its work (on these subject areas)" (ibid).

58. The subject areas listed in CRP.2 and CRP.3 are: (i) Projection of future production from the international seabed Area; (ii) Relationship between production from the Area and existing land-based production; (iii) Identification, definition and measurement of effects of seabed production on developing land-based producer States; (iv) Determination of the problems/difficulties that would be encountered by the affected developing land-based producer States; (v) Formulation of measures to minimize problems/difficulties of affected developing land-based producer States.

59. In the course of discussion, the interrelationships among the five subject areas became quite obvious, especially those among (ii), (iii) and

(iv). The needs for the relevant data and information were also recognized, and discussed on a number of occasions. Thus, deliberations in many instances were carried out by addressing the subject areas in an interrelated manner. However, for the purpose of a systematic presentation, a relatively distinct division can be made among the following items:

A. Projection of future production from the international seabed Area;

B. Relationship between production from the Area and existing land-based production; Identification, definition and measurement of effects of seabed production on developing land-based producer States; Determination of the problems/difficulties that would be encountered by the affected developing land-based producer States;

C. Formulation of measures to minimize problems/difficulties of affected developing land-based producer States;

D. Data and information needs.

B. Consideration and resolution of issues

60. By mid-1992, the Special Commission has been able to complete the consideration of all the issues under the four items above, except one. The remaining issue, which is one among a number of issues falling under item A above - projection of supply-demand-price of metals contained in seabed minerals - was considered in a preliminary fashion, and there was a presentation by an expert from the World Bank on this topic. The Special Commission plans to complete its consideration of this issue at the next session, based on a background paper to be prepared by the secretariat.

61. A lead-off background paper prepared by the secretariat (LOS/PCN/SCN.1/WP.1) presented an overview of all the issues under the four items above. After the completion of the discussion on this paper, the consideration of a specific issue under an item, in most cases, started with a discussion of a background paper on that issue prepared by the secretariat. The conclusions from such consideration were then negotiated, in a preliminary manner, often based on initial suggestions forwarded by the Chairman, and then incorporated in a comprehensive set of provisional conclusions.

62. During the sixth session of the Preparatory Commission (spring 1988), the Special Commission established an Ad Hoc Working Group (open to all members of the Special Commission) to deal with three "hard-core" issues, one falling under item B above and two under item C. This Group plans to complete its work during the next session.

63. After the completion of consideration of almost all the issues, the Special Commission then considered the matter of its recommendations to the Authority (background paper WP.11 and Chairman's suggestions in CRP.16 and Rev.1). During the seventh session of the Preparatory Commission

(spring 1989), the whole range of provisional conclusions of the deliberations of the Special Commission were drawn up by the Chairman (contained in CRP.16), which can form the basis of its recommendations to be submitted to the Authority, as per its mandate. These provisional conclusions were revised by the Chairman (CRP.16/Rev.1), as a result of discussions in the Special Commission. In the course of discussing the revised conclusions during the ninth session (spring 1991), a 14-member Chairman's Negotiating Group was established by the Special Commission to negotiate, on an ad referendum basis, the provisional conclusions and thereby the recommendations. The Special Commission carried out two rounds of negotiations in the Chairman's Negotiating Group on the first 10 of the 17 provisional conclusions in CRP.16/Rev.1. It is planned to complete negotiations on all the provisional conclusions during the next session.

64. In almost all of the issues falling under the purview of the Special Commission, there were different views of various groups of delegations, initially. By mid-1992, compromises have been achieved or are very close at hand in many issues; however, a few issues remain unresolved.

1. Projection of future production from the international seabed Area

(a) Completion of consideration of issues under the item

65. Under this item, the Special Commission discussed the minerals that may be produced from seabed sources, the metals that may be extracted from these minerals, and the current market situation and future prospects for these metals from land-based sources (background papers WP.2 and Add.1-3). As mentioned above, one issue under this item is yet to be considered fully.

(b) Resolution of issues

66. Issues resolved. Given the lack of certainty as to which minerals would be produced from the seabed in the future and which metals would be extracted from those minerals, one view was that in connection with assisting developing land-based producer States, the Authority should concern itself with all possible minerals that could be exploited from the seabed, while the opposing view was to focus on polymetallic nodules alone since these minerals appear to be the likeliest to be exploited first. It was agreed that

- The Authority should concentrate its work on polymetallic nodules, including the projected timing of commercial production from the Area. It should also keep in view the trends and developments regarding seabed minerals other than polymetallic nodules, for example, polymetallic sulfides, cobalt-rich crusts, etc.

- The Authority should concentrate its work on copper, nickel, cobalt and manganese to be extracted from polymetallic nodules. It should also keep in view the trends and developments regarding the other metals and non-metallic elements contained in polymetallic nodules.

67. It was also agreed that

- The Authority should keep abreast of the forecasts of the mineral situation with and without seabed production in the future.

68. Issues close to resolution. With respect to the forecasts of the mineral situation, while one view was that the Authority should carry out forecasting on its own, another view was to rely on existing forecasts alone for the sake of cost-effectiveness. The resolution of this issue is close at hand, along the following lines:

- The Authority should use existing forecasts as far as practicable, and will carry out forecasting only when no existing forecasts serve its purpose.

2. Relationship between production from the Area and existing land-based production; Identification, definition, and measurement of effects of seabed production on developing land-based producer States; Determination of the problems/difficulties that would be encountered by the affected developing land-based producer States

(a) Completion of consideration of issues under the item

69. Under this item, the Special Commission considered the possible impact of the introduction of metals from seabed sources into the metal markets, the importance of recycling and substitution in the metal markets, and the importance of bilateral trade (background papers WP.2/Add.4, 6 and 7, and WP.13). The Special Commission then considered the issue of identifying land-based producer States likely to be affected by future seabed production (background papers WP.3 and WP.6), and suggestions of the Chairman of the Special Commission and of the Chairman of the Ad Hoc Working Group contained in CRP.8, CRP.18 and Rev.1-3). The Special Commission then considered the issue of measuring effects of future seabed production and problems that may be encountered by developing land-based producer States concomitant with those effects (background papers WP.4 and WP.7, and Chairman's suggestions in CRP.9 and CRP.14).

(b) Resolution of issues

70. Issues resolved. Taking into account the fact that seabed mining will occur only in the future, perhaps more than a decade away, it was agreed that

- At this time the Authority cannot study the above matters with any reasonable degree of precision and accuracy, and therefore, the Authority should focus on pertinent data, information and analysis, and on the projected timing of commercial production from the international seabed Area.

71. It was also agreed that

- The best way to assist developing land-based producer States would be to examine the situation on a case-by-case basis.

- In this context, the process can start with the submission of applications for assistance by developing land-based producer States likely to suffer adverse effects from future seabed production, in the cases where the applications are submitted prior to the commencement of commercial production from the seabed, and by developing land-based producer States which consider themselves adversely affected by seabed production, in the cases where the applications are submitted after the commencement of commercial production from the seabed.

72. One view was that once such applications are submitted, the applicants should be assisted on a more or less automatic basis, while an opposing view held that the really deserving applicants can best be helped only after a determination has been made to that effect. It was then agreed that

- The applications have to substantiate the potential or actual effects, as the case may be, of seabed production; certain criteria should be applied in processing the applications; and most importantly, an in-depth investigation, on a case-by-case basis, should be carried out to assess the relationship between seabed production and land-based production by the applicant, to quantify the effects of seabed production on the export earnings or economy of the applicant, to investigate the problems encountered by the applicant directly linked with the effects, in order to determine what measures would best assist the applicant.

- In this connection the contents of applications, timing and procedures for submission of applications, procedures for processing applications including criteria to determine whether in-depth investigations would be initiated, were agreed upon. An outline of the said in-depth investigation was also agreed upon.

73. Issues close to resolution. In processing the applications, including carrying out the in-depth investigations on a case-by-case basis, the role of the Authority was extensively debated. One group of delegations maintained that existing organizations assisting developing countries and also active in the mineral sector have the requisite resources, expertise, and infrastructures to deal with similar problems, and it is these organizations which should process the applications. The opposing position was that it was the responsibility of the Authority, in particular the Economic Planning Commission, to process the applications. The resolution of this issue is close at hand along the following lines:

- Some kind of cooperative efforts between the Authority and the existing organizations, with the desirable mix of respective roles, can be devised.

74. While it was agreed that certain criteria based on the degree of dependency of the applicant on the four metals concerned (dependency threshold) and on the level of potential or actual effects of seabed production, as the case may be, on the export earnings or economy of the applicant (trigger threshold), and in the cases of applicants with special problems, based on certain safeguard clauses, would be applied in processing the applications, opposing views were held regarding the formulation of the safeguard clauses. One view was to make the safeguard clauses restrictive enough so that the Authority is not overwhelmed with too many applications. Another view was to have fairly lenient safeguard clauses so that applicants are not screened out right at the outset. In the spirit of compromise, a number of alternative safeguard clauses have been suggested by the opposing groups. A resolution along the following lines is close:

- Safeguard clauses with acceptable degrees of restrictiveness and leniency can be devised.

3. Formulation of measures to minimize problems/difficulties of affected developing land-based producer States

(a) Completion of consideration of issues under the item

75. Under this item, there was a large number of documents - background papers on existing measures of organizations, global, interregional, regional and subregional, intergovernmental and non-governmental (WP.5 and Add.1-4); Chairman's summary regarding relevance of these existing measures for developing land-based producer States (CRP.10 and Add.1); background papers on system of compensation/compensation fund (WP.9, WP.10 and WP.12); background paper on commodity agreements (WP.14); various proposals by delegations (by Pakistan in CRP.6 and CRP.17; by Zimbabwe in CRP.7; by the group of Eastern European Socialist countries in WP.8; by the European Economic Community and its member States in CRP.11, CRP.20 and Rev.1; by the Group of 77 in CRP.12 and CRP.21; and by Australia in CRP.15); and suggestions by the Chairman of the Ad Hoc Working Group (CRP.19 and Rev.1 and 2).

(b) Resolution of issues

76. Issues resolved. This was the item which was most extensively debated in the Special Commission. Intensive negotiations over the past few sessions have led to the resolution of a number of issues, as follows:

- Any specific measures or combination of measures that would assist developing land-based producer States, can be taken.

- Adequate resources for implementing the measures are expected to be available.

- There are possibilities that the Authority itself may have some resources to implement measures.

- Assistance to developing land-based producer States should be for the purpose of dealing with changed economic circumstances after seabed production, including economic adjustment, diversification, increased efficiency and productivity in the mineral sector, promotion of growth in other sectors.

- Assistance should be implemented and administered efficiently and in the most cost-effective manner.

77. Unresolved issues. The outstanding issues in which the positions of the various delegations appear to be the hardest to reconcile pertain to the nature and extent of assistance to be provided by the Authority itself to developing land-based producer States and the role that the Authority would have in deciding upon and implementing the assistance measures. Two fundamentally opposing positions were held by the EEC and its member States, on the one hand, and the Group of 77, on the other.

78. As the Chairman stated: "In my view, the thrust of the position of the EEC and its member States is that assistance to be provided to developing land-based producer States actually suffering or likely to suffer adverse effects from seabed production would take the form of economic adjustment assistance alone, and that the requisite measures would be decided upon and implemented by international and/or multilateral organizations, with the Authority having a catalyst's role. The thrust of the position of the Group of 77, in my view, is that the creation of a compensation fund by the Authority for the purpose of assisting [developing land-based producer States] is a valid and specified option the modalities of which should be discussed and analysed, and that whatever measure(s) of assistance is considered - Authority's own measure of compensation or economic adjustment, bilateral measures, existing economic measures of international or multilateral organizations, commodity agreements, anti-subsidy measures, or any combination thereof - the primary responsibility of deciding upon and implementing the requisite measure(s) lies in the Authority as the 'custodian' of the common heritage of mankind under the Convention." (LOS/PCN/L.88, para. 5)

79. Elaborating on its position, "the EEC stated that the overall concern of the EEC and its member States was to achieve a cost-effective use of resources and that the Authority should, therefore, not duplicate the work of international or multilateral organizations which already provide assistance to developing States in the framework of their respective programmes. In their view, the Authority should act as a catalyst and bring together the relevant organizations." (LOS/PCN/L.88, para. 7)

80. On the other hand, "the Group of 77 totally rejected attempts by the EEC to shift the primary responsibility of providing assistance to [developing land-based producer States] from the Authority to the other international and multilateral organizations. The Group stated that the proposal by the EEC that requests for assistance should be directed by the Authority to other organizations with the purpose of studies to be carried out, measures to be taken, and assistance to be provided by the latter, was not only unacceptable

to the Group but clearly would not work. According to the Group, the international or multilateral organizations might not have legal obligations, mandates or budgetary provisions to carry out such studies, take such measures or provide assistance, and that it was not indicated in the EEC proposal how the Authority would ensure that these matters would be taken care of." (LOS/PCN/L.88, para. 36)

81. In the above context, the specific unresolved issues in Special Commission 1 are the following:

- Whether a system of compensation of the Authority and the related compensation fund should be included among the measures;

- Whether resources under the existing measures of the existing organizations would be sufficient or most effective or whether the Authority must have resources of its own for the purpose;

- Whether specific provisions should be made so that resources are available to the Authority, or whether the Authority may be in a position to afford providing resources, from the sources of its income specified in the Convention and after meeting its expenditures specified in the Convention;

- What should be the role of the Authority in implementing and administering the assistance, when it is the measures of other organizations that are being applied; and

- What kind of anti-subsidy measures are needed.

4. Data and information needs

(a) Completion of consideration of issues under the item

82. The data and information needs were, in most cases, considered by the Special Commission in connection with its deliberations on the issues falling under the three previous items (CRP.4 and Add.1). Thus, the Special Commission considered the data and information needs in relation to seabed minerals (WP.2 and Add.1); in relation to the mineral situation - world-wide production, consumption, exports, imports, prices, reserves and resources, etc. - as well as in relation to developing land-based producer States (WP.2/Add.1, 3 and 5); and in relation to existing assistance measures of various organizations, global, interregional, regional and subregional, intergovernmental or non-governmental, that could minimize the problems/difficulties of developing land-based producer States (WP.5 and Add.1-4).

(b) Resolution of issues

83. Issues resolved. While there were some divergences of views between one group of delegations which maintained that the data and information needs of the Authority should cover a wide range of items and another group which maintained that the Authority should focus on a set of items that are directly related to assistance to developing land-based producer States, the issue was ultimately resolved

- By including the categories of data and information and the specific items under the respective categories that are directly related and useful for the purpose of assisting developing land-based producer States.

84. It was also agreed that

- The Authority, at the time when seabed mining becomes imminent or operational, would be in a better position to review the requisite categories, specific items under respective categories, and the degree of detail, and decide thereupon.

85. The manner in which the Authority should collect and maintain data and information was also agreed upon. In this connection, it was agreed that

- The Authority should develop and maintain cost-effective databases; for the purpose of developing and maintaining such databases, wherever possible the Authority should extract data and information from the public domain and from States through voluntary submission by themselves or submissions by them on request.

- For meeting the data and information needs, the Authority should cooperate with, and obtain support from the relevant organizations.

III. SPECIAL COMMISSION 2

A. Introduction

Mandate of the Special Commission

86. According to paragraph 8 of resolution I, the Special Commission for the Enterprise shall:

(a) Take all measures necessary for the early entry into effective operation of the Enterprise; and

(b) Perform the functions referred to in paragraph 12 of resolution II.

87. Paragraph 12 of resolution II, in its chapeau, establishes the objective of ensuring that the Enterprise is able to carry out activities in the Area in

such a manner as to keep pace with States and other entities. To that end, it requires that

"(a) every registered pioneer investor shall:

"(i) carry out exploration, at the request of the Commission, in the area reserved, pursuant to paragraph 3 in connection with its application, for activities in the Area by the Authority through the Enterprise or in association with developing States, on the basis that the costs so incurred plus interest thereon at the rate of 10 per cent per annum shall be reimbursed;

"(ii) provide training at all levels for personnel designated by the Commission;

"(iii) undertake before the entry into force of the Convention, to perform the obligations prescribed in the Convention relating to transfer of technology;

"(b) every certifying State shall:

"(i) ensure that the necessary funds are made available to the Enterprise in a timely manner in accordance with the Convention, upon its entry into force; and

"(ii) report periodically to the Commission on the activities carried out by it, by its entities or natural or juridical persons."

Programme of work

88. The Special Commission commenced its work with the adoption of the programme of work contained in document LOS/PCN/SCN.2/1984/CRP.1 and decided to give first priority to its consideration of the application of paragraph 12 of resolution II, and consideration of the preparatory measures that could be undertaken in accordance with the provisions of that paragraph; secondly, to a consideration of the structure of the Enterprise and in particular, the structure and requirements for its start-up establishment; and thirdly, to an examination of operational options, beginning with an evaluation of the joint venture option for the initial operation of the Enterprise as follows:

(i) Application of resolution II, paragraph 12, including

(a) Development of a training scheme

(b) Other measures to be taken under paragraph 12

(ii) Establishment of the organizational structure of the Enterprise

(a) Draft rules of procedure of the Governing Board

(b) Draft Staff Rules

(c) Draft Financial Rules

(d) Establishment of the principal office of the Enterprise

(e) Administrative and financial arrangements

(iii) Development of policies and feasibility studies in preparation for the early entry into effective operation of the Enterprise:

(a) Elaboration of operational options

(b) Project formulation

(c) Supplementary procedures for conduct of operations

(iv) Formulation of recommendations for the initial operation and administration of the Enterprise

(v) Other questions, including

(a) Coordinative arrangements for dealing with matters relating also to the work of other bodies of the Preparatory Commission

(b) Establishment of an information programme on seabed resource development, including in particular, an information system on technology suppliers.

89. Item (iv) in the programme of work was recognized as mostly being a distillation of the conclusions that would be reached in the course of work on items (i), (ii) and (iii). With regard to item (v), it was understood that the need for coordination with other bodies would be addressed as and when necessary, and that the requirement for an information programme on seabed resource development, as indicated in item (v)(b), would be identified in the course of the Special Commission's future work. 1/

90. The Special Commission initially envisaged its work as encompassing the full range of preparatory work needed to facilitate the implementation of the Convention and to assure the ability of the Enterprise "to keep pace" with registered pioneer investors, in the event that seabed mining was ready to commence at the time of entry into force of the Convention. It thus adopted a comprehensive approach which would allow it to produce a detailed set of generally applicable recommendations and draft rules as to the organizational structure, policies, management and operations of the Enterprise, as well as a set of distinct recommendations with respect to the initial operations and administration of the Enterprise, recognizing the need to allow for evolution. 2/ This approach also determined the scope and content of its initial working papers. 3/ With respect to its mandated functions under resolution II, the Special Commission from the beginning, paid special attention to the need to organize a training scheme.

91. It must be noted, however, that the approach adopted to the Commission's work underwent substantial changes as a result of delays in the registration of pioneer investors and the consequent arrangements for the implementation of resolution II introduced by the Preparatory Commission. With the exception of the establishment of a training scheme, the special preparatory functions set forth in paragraph 12 of resolution II have been dealt with outside Special Commission 2.

92. It must be noted also, that the likelihood of the entry into force of the Convention being coincidental with the economic viability of a seabed mining industry was increasingly questioned, with consequent effects on the approach adopted and the priorities accorded by the Special Commission to the different elements of its work. During the resumed fourth session (1986, New York), when it became clear that the prospects for seabed mining were unfavourable and that there was little likelihood of its coincidence with the entry into force of the Convention, certain modifications in the programme of work of the Special Commission were introduced. Several of these modifications reflected a new understanding of the general scope and content of the recommendations that the Special Commission could most usefully prepare to ensure "early entry into effective operation of the Enterprise" (its mandate under resolution I) and its ability to keep pace with the activities of pioneer investors (its mandate under resolution II). There were thus three sufficiently distinct sets of recommendations contemplated:

(a) Those that addressed the first operations of the Enterprise and that would necessarily need to take account of the economic conditions for seabed mining;

(b) Those that dealt with basic administrative, management and procedural matters, that would be unaffected by the timing of operations and that would permit the Enterprise to function as a distinct entity, without unnecessary delay; and,

(c) Those that addressed the implementation of paragraph 12 of resolution II and that may or may not be organically linked to recommendations on the first operation. 4/

93. Of particular note was the Special Commission's introduction of a special mechanism (the Chairman's ad hoc Advisory Group on Assumptions) to monitor economic factors pertinent to the question of seabed mining viability. That need, shared also by Special Commission 1, had not been envisaged at the outset. Also notable was its general conclusion that virtually any concrete recommendation it could make on both operational and organizational matters would need to be revised as and when economic prospects for mining improve. 5/

94. As a result, from 1986 to the present, the work of Special Commission 2 focused on three main areas: development and establishment of a training programme; organizational structure of the Enterprise and consideration of a recommendation regarding a pre-operational Enterprise; and on operations of the Enterprise including project feasibility analysis, an agreed set of working assumptions and the initial operation of the Enterprise.

B. Application of resolution II, paragraph 12

Development of a training scheme

95. With respect to its mandated functions under resolution II, the Special Commission, from the beginning, paid special attention to the need to organize a training scheme. While the basic design of the training programme was grounded on the scope of the training obligation of the pioneer investors, Special Commission 2 began to introduce an important distinction in its work as between the formulation of basic planning guidelines and modalities for a training programme, and decisions as to its actual implementation.

96. An Ad Hoc Working Group on Training with a mandate to draft the principles, policies, guidelines and procedures for a Preparatory Commission training programme was established by the Special Commission during the fifth session of the Preparatory Commission (1987, Kingston). At the resumed sixth session (1988, New York), the Ad Hoc Working Group on Training submitted the "Principles and Policies for a Training Programme to be instituted by the Preparatory Commission" (LOS/PCN/SCN.2/1988/CRP.3) to the Special Commission and at the seventh session (1989, Kingston), it submitted to the Commission the "Draft Guidelines and Procedures for the Implementation of the Training Programme" (LOS/PCN/SCN.2/1989/CRP.4). Special Commission 2 concluded that there was basic agreement on the documents and that they provided the basis for the work on training. 6/ Following a request by the Special Commission, these documents went through a few drafting changes to become document LOS/PCN/SCN.2/L.6/Rev.1, "Principles, Policies, Guidelines and Procedures for a Preparatory Commission Training Programme".

97. LOS/PCN/SCN.2/L.6/Rev.1 was adopted first by Special Commission 2 and then by the Preparatory Commission during the resumed seventh session (1989, New York). During the eighth session (1989, Kingston) the Preparatory Commission adopted LOS/PCN/SCN.2/L.7, "Implementation of the Preparatory Commission Training Programme. Recommendations of Special Commission 2".

98. During the ninth session (1992, Kingston), the Training Panel was constituted with 21 members selected on the basis of the principle of equitable geographical distribution and, including one expert from each of the registered pioneer investors. 7/ The Panel held its first meeting during the resumed ninth session (1991, New York) and decided that traineeships should cover five engineering disciplines (chemical/metallurgical, electrical, electronic, mechanical and mining), marine geology, marine geophysics and marine ecology as set forth in LOS/PCN/BUR/R.9.

99. At the tenth session (1992, Kingston), the Training Panel approved the training programmes offered by France and Japan (each of which was for three traineeships starting in November 1992 and May 1993 respectively), established the minimal qualifications of applicants for the training programme, developed criteria for selecting candidates and approved a note verbale announcing the training programmes of France and Japan. 8/ The Training Panel will meet during the first week of the resumed tenth session (1992, New York). At this

meeting it will select six candidates for the programmes of Japan and France, review the revised training programmes offered by the Russian Federation and India, and the training programme offered by Germany. 9/ As a number of registered pioneer investors and technologically advanced States who may be interested in offering training programmes have not yet submitted their training programmes, the Training Panel will have to continue to meet in the future to review these programmes, and, following the receipt of candidates for these programmes, make a selection. It will also have to meet to review the actual training programmes and their results.

Other measures to be taken under paragraph 12

100. As noted earlier, with the exception of the establishment of a training scheme, the special preparatory functions set forth in paragraph 12 of resolution II were assigned to the Plenary of the Preparatory Commission and were therefore dealt with outside Special Commission 2.

C. Establishment of the organizational structure of the Enterprise

101. As early as its initial exchange on the Enterprise's organizational structure and given its perception of present and predicted economic conditions, the Special Commission called for a pragmatic approach to planning for the "early entry into effective operation of the Enterprise" and stressed that the initial Enterprise might best be regarded as a nucleus establishment capable, however, of maturing quickly under favourable operating conditions. 10/

102. At the request of the Special Commission in 1984, document LOS/PCN/SCN.2/WP.2, entitled "The Enterprise - start-up requirements and preparatory measures", was prepared to facilitate its work in this regard. As a result of its discussion on this working paper, the Special Commission recognized the need to elaborate a possible structure and organization for the Enterprise that took into account the extent to which operational modalities would affect organizational matters, and also the need to establish the Enterprise with a minimal and flexible arrangement that would enable it to respond to favourable operating circumstances.

103. An outgrowth of the discussions of LOS/PCN/SCN.2/WP.2 was an additional request concerning the development of an expert team for the Enterprise and the process for facilitating their recruitment by the Enterprise. Document LOS/PCN/SCN.2/WP.7, entitled "Development of an ad hoc expert core group for the Enterprise to assist the preparatory Commission", was prepared in response to this request. In 1986 (New York), the Special Commission requested a new working paper that would be useful in a discussion of an initial "nucleus" Enterprise should delays in the projected start-up of seabed mining persist at the time of the establishment of the Enterprise. A "nucleus" Enterprise would be recommended in order to provide for continued pre-feasibility work. 11/

104. The working paper prepared by the secretariat at the Special Commission's request, LOS/PCN/SCN.2/WP.12, entitled "A nucleus Enterprise", bore a resemblance, in terms of functions, to the earlier notion of a "core expert group" contained in document LOS/PCN/SCN.2/WP.7. The monitoring, evaluation and continued preparatory functions contained in the report that would need to be performed in the pre-feasibility period were generally accepted by the Special Commission. Also accepted was the necessity of keeping personnel and costs to a minimum during that period. However, some differences arose as to the proper status that should be accorded such a "nucleus", pre-operational Enterprise.

105. Following these discussions, the Special Commission requested a working paper on the general framework provided in annex IV to the convention which contains the statute of the Enterprise to help it to focus on what the powers, functions and internal procedures of a nucleus Enterprise should be. 12/ The working paper LOS/PCN/SCN.2/WP.16 of 22 February 1989, entitled, "Provisions of the convention relating to the structure and organization of the Enterprise", proved to be a useful means of focusing attention on the constituent elements of the Enterprise, as well as a means of identifying those provisions of the Convention that required annotations. It also helped to identify those elements that would form the substance of transitional arrangements to deal with the pre-operational stage of the Enterprise. 13/

Structure and organization

106. In its consideration of working paper LOS/PCN/SCN.2/WP.16, the Special Commission set as its purpose: to allow the Preparatory Commission to comment on provisions of the Convention in the interest of promoting reasonable interpretation; to suggest additional draft provisions to facilitate effective application; and to suggest additional draft rules on matters such as the confidentiality requirement, on which the Convention has no rule relating to the Enterprise. As a result of the discussion and comments made on LOS/PCN/SCN.2/WP.16, the Special Commission's final recommendations to the Plenary of the Preparatory Commission on the structure and organization of the Enterprise are contained in document LOS/PCN/SCN.2/L.8 of 14 August 1991, entitled "Recommended Annotations by Special Commission 2 on the Provisions of the Convention Relating to the Structure and Organization of the Enterprise".

Transitional arrangements for the Enterprise

107. As a result of its discussions of LOS/PCN/SCN.2/WP.12 and WP.15, the Special Commission requested its Chairman to prepare a short paper setting forth the main elements that would form the substance of transitional arrangements to deal with the pre-operational stage of the Enterprise. 14/ Documents LOS/PCN/SCN.2/1990/CRP.5 and Add.1 and 2 set forth the purpose of transitional arrangements, the functions to be performed under the transitional arrangements, the status and structure of the institutional arrangements and rules applicable to the transitional arrangements.

108. At the most recent session (1992, Kingston), the Acting Chairman, in an effort to assist the Special Commission to conclude its debate on this issue and be in a position to make a recommendation to the Assembly, proposed the following method as a means for the Special Commission to communicate its conclusions:

> "Pursuant to its mandate, Special Commission 2 had devoted considerable effort in grappling with this issue. Most recently, this has occurred in CRP.5 and Addenda 1 and 2, which have been debated both formally and informally. What has emerged from these discussions is a widely held view that, in the light of the prolonged delay in the development of deep seabed mining activities, it is unlikely that the Enterprise would be able to undertake operational activities for quite some time. Therefore, in the initial phase what will likely be needed is some initial institutional arrangement which could be activated as circumstances dictate. At the same time, it was recognized that the operations of the Enterprise should be based on sound commercial principles and that it should be autonomous and free from political domination.
>
> "Just as the drafters of the Convention were unable successfully to forecast when commercially viable seabed mining would commence, we should also avoid a similar peril and not, at the present time, attempt to devise concrete operational structures for the Enterprise in the interim period. Let us remember that our task in Special Commission 2 is to provide our best advice, based on all available information, to the Assembly on how to deal with these unforeseen circumstances.
>
> "The proposal, therefore, is that the Special Commission advise the Assembly to proceed on the basis of an evolutionary approach where the functions of the Enterprise, laid down in the Convention for its efficient operation, are filled and carried out according to the dictates of the prevailing circumstances. We could go as far as to say that the functions enumerated in Part II of CRP.5 represent our best judgement on the activities to be undertaken by the Enterprise in this interim period.
>
> "The Assembly will have to judge the best way in which these and any other functions are to be carried out and the functional mechanisms and initial status and structure of the Enterprise during the transitional period. Moreover, it should also be kept in mind that there is a general view on the need to minimize the costs to States Parties while at the same time safeguarding both the effective operation of the Enterprise and its ability to evolve in an orderly fashion, as circumstances dictate, into a viable participant in deep seabed mining." 15/

D. Development of policies and feasibility studies in preparation for the early entry into effective operation of the Enterprise

Operations of the Enterprise

109. From the first consideration of this topic, attention was focused on the initial period, which was described in 1984 in LOS/PCN/SCN.2/WP.2, as beginning "under favourable conditions" in the third year, with the pre-investment stage of operations in the fifth year. At the same time, it was also recognized that there would be a critical period in the six months following entry into force, since it would be then that the financial situation would become clear and when registered pioneer investors would be anticipated to exercise their acquired rights.

110. Also evident from the beginning of its work, had been the Special Commission's recognition of the need to give priority attention to joint ventures as an operational option of the Enterprise, particularly for its first venture. 16/

Project feasibility analyses

111. The first discussions of the Enterprise's operations took place on the basis of LOS/PCN/SCN.2/WP.6 of 5 February 1985, which had been prepared in response to the Special Commission's request for a complete project profile for the Enterprise, as provided for in article 170 of the Convention. 17/ That working paper, entitled "Project profile of a deep seabed mining operation by the Enterprise", which relied for its data and methodology on pre-existing, readily available studies, concentrated on evaluating the options available to the Enterprise (i.e., joint ventures, leasing/service contracts, Enterprise as sole operator and mixes thereof according to the phase of work), according to financial and manpower requirements.

112. While that working paper was predicated on the underlying assumption of the perceived economic viability of seabed mining and also drew attention to the large number of uncertainties involved, questions were none the less raised as to the basic framework of the profile, particularly as to the parameters listed in its paragraph 20, and their reflection of present and predicted conditions in the minerals industry and markets. 18/

113. To demonstrate some of the issues involved, the delegation of Australia undertook a special study, incorporating more recent data and submitted it in document LOS/PCN/SCN.2/WP.10 of 14 January 1986, entitled "Economic viability of deep seabed mining of polymetallic nodules". That working paper gave a pessimistic assessment of the economic viability of seabed mining which was attributed to the state of the metal markets. It stated that in the light of the prevailing economic trends, particularly the metal prices for cobalt, copper, manganese and nickel, increases in aggregate metal prices, to as high as twice their levels at March 1985, would be required to make the mining venture viable. It concluded that given the metal price outlook, deep seabed mining for polymetallic nodules is unlikely to be undertaken on a commercial basis for the foreseeable future.

Chairman's Advisory Group on Assumptions

114. Consequent upon the discussion of LOS/PCN/SCN.2/WP.10, the Special Commission recognized the need to keep the matter of assumptions under review. It therefore created in 1986 (New York session) an Ad Hoc Group on Assumptions, later to become a permanent feature of the Special Commission's work. The Group was required to report regularly as to whether, in the light of the latest data, a new study updating LOS/PCN/SCN.2/WP.10 could be undertaken by the Government of Australia. To date, the Group has concluded that the time has not yet come. At the most recent session (1992, Kingston), the Group stated that its work required continuity and that during the period before the Convention enters into force, the body that succeeds the Group on Assumptions should concentrate on, inter alia, periodic analyses of world markets, metal prices, etc. 19/

Initial operation

115. From its first consideration of this topic, the Special Commission recognized the need to give priority attention to joint ventures as an operational option of the Enterprise, particularly for its first venture. The advantages of joint ventures from the viewpoint of practicality and minimization of risks were stressed, as were the advantages for both mining and processing, particularly with regard to transfer of technology and development of manpower. Nevertheless, it was agreed that the first option to be studied in detail was that of the Enterprise as sole operator of a fully integrated project.

116. Consequent upon the discussions of LOS/PCN/SCN.2/WP.6 and LOS/PCN/SCN.2/WP.10, when the Special Commission decided that any concrete recommendation it drew on operational matters might need to be revised as and when economic prospects for mining improved, consideration of the Enterprise as sole operator in its initial operations were deferred. 20/

117. The Special Commission decided at the most recent session (1992, Kingston) that it was ready to submit its final recommendation on the subject of a joint venture as the preferred option for the Enterprise in its initial operation. This recommendation would include all the documents which have been presented to the Commission on the subject of joint ventures, in particular, the Commission's comments on the draft basic joint venture contract contained in documents LOS/PCN/SCN.2/WP.18 and Add.1 of 9 and 10 August 1990, respectively. In this regard, the Special Commission emphasized that research and development, an essential component of high-technology ventures such as seabed mining, should be included within the scope of the joint venture contract as that would advance the cause of the Enterprise. 21/

IV. SPECIAL COMMISSION 3

A. Introduction

118. Special Commission 3 was charged with the mandate to prepare rules, regulations and procedures for the exploration and exploitation of polymetallic nodules in the Area, i.e. the seabed mining code. Special Commission 3 commenced its work (under the Chairmanship of Mr. Hans Sondaal of the Netherlands) by identifying the issues contained in annex III, article 17, which require rules, regulations and procedures. These issues are: administrative procedures relating to prospecting, exploration and exploitation in the Area; the size of areas (mine sites); duration of operations; performance requirements including assurances, pursuant to article 4, paragraph 6 (c) of annex III of the Convention; categories of resources; renunciation of areas; progress reports; submission of data; inspection and supervision of operations; prevention of interference with other activities in the marine environment; transfer of rights and obligations by a contractor; procedures for transfer of technology to developing States in accordance with article 144 of the Convention and for their full participation in activities in the Area; mining standards and practices, including those relating to operational safety; conservation of marine resources and protection of the marine environment; definition of commercial production; qualification standards for applicants; establishment of uniform and non-discriminatory costing and accounting rules and the method of selection of auditors; apportionment of proceeds from mining operations; the incentives referred to in article 13 of annex III of the Convention; implementation of decisions taken pursuant to article 151, paragraph 10, and article 164, paragraph 2 (d), of the Convention. Though the list of issues provided for in annex III, article 17, is extensive, it is not exhaustive. There are matters relating to the conduct of activities in the Area which are not included in that article, such as:

(a) Protection of human life (art. 146);

(b) Erection, emplacement and removal of installations used for carrying out activities in the Area (art. 147, para. 1);

(c) Prescription of period other than five years for issuance of production authorizations (art. 151, para. 2 (a));

(d) Implementation of paragraph 7 of article 151;

(e) Criteria and procedures for the implementation of the sponsorship requirements (annex III, art. 4, para. 3);

(f) Objective and non-discriminatory standards for the purpose of selection among applicants for production authorizations (annex III, art. 7, para. 2);

(g) Financial matters other than those referred to in annex III, article 17, e.g. annex III, article 13.

119. To facilitate its consideration of these issues, Special Commission 3 requested the Secretariat to prepare draft working papers on which the discussions in the Special Commission would be based.

120. In 1984, the Secretariat prepared a series of working papers:

(a) LOS/PCN/SCN.3/WP.1 - Seabed Mining Code (Background Paper);

(b) LOS/PCN/SCN.3/WP.2 - Draft Regulations on Prospecting, Exploration and Exploitation - application for approval of plans of work (Background Paper);

(c) LOS/PCN/SCN.3/WP.2/Add.1 - Draft Regulations on Prospecting, Exploration and Exploitation in the Area (application for approval of plans of work);

(d) LOS/PCN/SCN.3/WP.3 - Draft Regulations on Prospecting, Exploration and Exploitation - content of application (Background Paper);

(e) LOS/PCN/SCN.3/WP.3/Add.1 - Draft Regulations on Prospecting, Exploration and Exploitation in the Area - content of application;

(f) LOS/PCN/SCN.3/WP.4 - Draft Regulations on Prospecting, Exploration and Exploitation - content of application (Background Paper);

(g) LOS/PCN/SCN.3/WP.5 - Draft Regulations on Prospecting, Exploration and Exploitation in the Area - payment of fee (Background Paper).

121. After the discussion of the working papers listed in the paragraph above, and in order to provide a focus and a tool for further deliberations, the Special Commission requested the Secretariat to prepare a comprehensive document incorporating the contents of the above-mentioned papers in the form of draft regulations. This document was issued in 1985 as LOS/PCN/SCN.3/WP.6 (Draft Regulations on Prospecting, Exploration and Exploitation of Polymetallic Nodules in the Area) and was accepted by the Special Commission as the basis for discussion.

122. The Special Commission later requested the Secretariat to prepare a series of addenda to document LOS/PCN/SCN.3/WP.6 in order to complete the set of working papers required to discharge its mandate. The following is a brief description of the contents of the working papers and of the discussions conducted in Special Commission 3.

B. Discussion of working papers

1. LOS/PCN/SCN.3/WP.6/Add.6

Draft Regulations on Prospecting, Exploration and Exploitation of Polymetallic Nodules in the Area

123. The document was discussed during 31 formal and informal meetings of Special Commission 3 and the central issue of the discussions was the "one-stage/two-stage" application procedure, i.e. whether or not the designation of an area and the application for approval of a plan of work should be considered as one or two separate stages.

124. The reasons for supporting the one-stage approach were that: (a) the Convention does not provide for a two-stage procedure; (b) the Authority should not be placed at a disadvantage in obtaining knowledge of the particulars of the area for which an application was submitted; (c) since the Authority was responsible for the selection of the reserved area, it was necessary for the Authority to have access to as much information as possible to enable it to make an informed decision on its selection; (d) in the absence of a plan of work for each of the two areas (one for the applicant, one reserved for the Authority), the Authority would have to rely solely on geological data which would not be sufficient for an accurate assessment of the equal commercial value of both areas.

125. On the other hand, the reasons for supporting the two-stage approach were that: (a) it had a legal basis in the Convention; (b) an applicant was not obliged to draw up a plan of work for the Enterprise since the Enterprise was an independent body; (c) it was not practical to draw up two plans of work since this would be costly and the plan of work for the Enterprise would probably be out of date by the time the Enterprise went into commercial production; (d) since the designation of areas would be done by random selection, it would obviate the need for submission of any data and would be the best guarantee for selecting two areas of equally estimated commercial value.

126. In June 1988 the Chairman of Special Commission 3 (Mr. Jaap Walkate of the Netherlands) after revising document LOS/PCN/SCN.3/WP.6, taking into account the views expressed in the discussion, issued document LOS/PCN/SCN.3/WP.6/Rev.1. In order to resolve the "one-stage/two-stage" question, the Chairman proposed that the application should be submitted in two parts: the first part containing data and information to be submitted by the applicant before the designation of the area and the second part containing data and information to be submitted by the applicant before the final approval of the plan of work.

2. LOS/PCN/SCN.3/WP.6/Add.6/Rev.1

Draft Regulations on Prospecting, Exploration and Exploitation of Polymetallic Nodules in the Area - Procedures for Application, Approval and Issuance of Production Authorizations

127. The document was discussed during nine meetings of the Special Commission.

128. Some of the views supported the production limitation formula since it was felt that it would help integrate and stabilize mineral markets when seabed mining was in production. Concern was also expressed about the effects of unrestricted or subsidized seabed mining operations on producers and consumers alike.

129. Other views characterized the production limitation formula as an artificial restraint both on the commencement of seabed mining and on production levels. It was emphasized that the formula itself was one of the serious obstacles to universal acceptance of the Convention.

3. LOS/PCN/SCN.3/WP.6/Add.2

Draft Regulations on Prospecting, Exploration and Exploitation of Polymetallic Nodules in the Area - Draft Financial Terms of Contract

130. The document was discussed at 30 meetings of Special Commission 3 and one of the main concerns expressed in the discussions regarded the present system of taxation, as prescribed in the Convention. Some of the issues raised in this context were whether the required payments imposed too heavy a burden on seabed miners and whether the choice of the system of payment which may involve an annual fixed fee, a production charge or a combination of a production charge and a share of net proceeds was too complicated.

131. In the course of discussions varying views were expressed. On the one hand, it was felt that: changed economic and market circumstances called for a review of the system of payment and the rates of taxation; the front-end payments that were to be incurred before mining income was generated were onerous; it was preferable to establish two levels of annual fixed fees - one for exploration only and the other for exploration and exploitation.

132. On the other hand it was stated that: before mining income was generated, a reasonable payment should be made once prospective deep seabed miners had secured exclusive mining areas and had obtained exploration rights; lower rates of taxation of the mining income would not only reduce the revenues of the Authority, but could also give rise to the possibility that deep seabed miners would have a competitive advantage in comparison with land-based miners through a more lenient tax system; mining States would diminish the revenue benefits for the Authority by seeking a reduction in tax revenues to it while imposing their own national taxes on operators.

133. Document LOS/PCN/SCN.3/WP.6/Add.2 was revised by the Chairman taking into account views expressed in the discussions and was issued as document LOS/PCN/SCN.3/WP.6/Add.2/Rev.1 on 25 May 1989.

4. LOS/PCN/SCN.3/WP.6/Add.3

Draft Regulations on Prospecting, Exploration and Exploitation of Polymetallic Nodules in the Area - Draft Financial Terms of Contract (Draft Regulations on Financial Incentives)

134. The document was discussed at two meetings of Special Commission 3. Differing views were expressed as to whether incentives should be an integral component of the financial rules or whether they should be provided solely at the discretion of the Authority and only in exceptional circumstances.

135. The reason for favouring the incentives as an integral part of the financial rules was that the rules would then contain a clear mechanism and an institutional framework based on stable criteria and non-discriminatory procedures under which uniform and predetermined incentives would be provided automatically in compliance with conditions detailed in advance.

136. The other point of view was that the provision of financial incentives should not be viewed as creating an exception to the financial terms of contract. The availability of incentives should not be automatic but should be awarded on an ad hoc, case-by-case basis at the discretion of the Authority. It was also suggested that the provision of such incentives should not amount to subsidizing seabed mining, especially to the detriment of land-based mining.

137. Since the discussion concentrated mostly on procedural rather than substantive issues, the Chairman decided not to revise the original draft but to include it as Part B in document LOS/PCN/SCN.3/WP.6/Add.2/Rev.1, which contained the revised draft financial terms of contract.

5. LOS/PCN/SCN.3/WP.6/Add.4

Draft Regulations on Prospecting, Exploration and Exploitation of Polymetallic Nodules in the Area (Draft Regulations on the Transfer of Technology until Ten Years after Commencement of Commercial Production by the Enterprise)

138. The document was discussed at 28 meetings of Special Commission 3 and it set out, inter alia, procedures for the Enterprise to follow if it failed to obtain deep seabed mining technology on the open market at fair and reasonable commercial terms and conditions.

139. The working paper attempted to strike a balance between the obligation of the Enterprise to undertake adequate efforts to procure technology on its own,

and the obligation of the contractor to assist it, and if required, to negotiate acceptable terms for its sale if the Enterprise fails to obtain such technology.

140. Two differing views were expressed in the discussion.

141. According to one view the seabed mining technology to be transferred to the Enterprise should cover processing technology as well. It was also felt that "essential interests of [a State Party's] security", referred to in article 302 of the Convention, should not constitute a loophole for States seeking to avoid technology transfer obligations. If the technology could not be transferred for security reasons, it could not be utilized by the operator in the international seabed area, since this would be disadvantageous to the Enterprise. It was further suggested that procedures requiring that the organs of the Authority review their decision to invoke a contractor's undertaking to transfer technology could cause unnecessary delays and obstruct the implementation of transfer obligations.

142. According to the other view the provisions for the compulsory transfer of technology were a disincentive to investment and technology development and that the Convention did not envisage the transfer of processing technology. It was pointed out that in regard to seabed mining technology, the Enterprise should adhere to regular commercial practices since adequate technology would be available on the open market. The Enterprise would be assisted by contractors who would provide general descriptions of equipment and methods of such technology and information as to where similar technology may be obtained. It was also suggested that joint ventures would provide the most effective means for the transfer of technology which would be subject to conditions to be agreed among the parties concerned.

143. The working paper of the secretariat (LOS/PCN/SCN.3/WP.6/Add.4) was revised by the Chairman and was issued as document LOS/PCN/SCN.3/WP.6/Add.4/Rev.1 on 9 August 1990.

6. LOS/PCN/SCN.3/WP.6/Add.5

Draft Regulations on Prospecting, Exploration and Exploitation of Polymetallic Nodules in the Area (Protection and Preservation of the Marine Environment from Activities in the Area)

144. The document was discussed at 25 meetings of the Special Commission. In the course of discussions it became clear that all States wished to ensure the protection and preservation of the marine environment. However, it was also felt that very little was known at present regarding the environmental consequences of deep seabed mining and that significantly more long-term and substantial research would have to be conducted to enable informed decisions to be made at the appropriate time.

145. The paper was revised by the Chairman (Dr. Gregory Alan French of Australia, who had assumed the chairmanship of Special Commission 3) following several sessions of informal consultations and was issued under a new title, "Protection and preservation of the marine environment from unacceptable changes resulting from activities in the Area" in document LOS/PCN/SCN.3/WP.6/Add.5/Rev.1 on 27 August 1991.

7. LOS/PCN/SCN.3/WP.6/Add.6

Draft Regulations on Prospecting, Exploration and Exploitation of Polymetallic Nodules in the Area (Accommodation of Activities in the Area and in the Marine Environment)

146. The document was discussed at five meetings of Special Commission 3. There was a convergence of views that all relevant activities should be accommodated in the Area and in zones outside national jurisdiction as long as these activities did not interfere with one another. It was felt also that while it was important to promote the principle of "reasonable regard", some priorities might have to be determined and that the role of competent international organizations should be more clearly defined.

147. All these issues were addressed in informal consultations conducted by the Chairman which enabled him to revise the working paper and to issue it as document LOS/PCN/SCN.3/WP.6/Add.6/Rev.1 on 28 June 1991.

8. LOS/PCN/SCN.3/WP.6/Add.7

Draft Regulations on Prospecting, Exploration and Exploitation of Polymetallic Nodules in the Area (Accounting Principles and Procedures)

148. The document was discussed at 15 meetings of the Special Commission. Two main views evolved from the discussion: on the one hand it was felt that complicated accounting principles and procedures were not required, especially if the contractor selected the production charge system of paying revenues to the Authority. It was pointed out that once the quantities of polymetallic nodules recovered and the amounts of processed metals produced by the contractor were known, the production charge system would be simple enough to avoid the need for detailed examination of the contractor's accounting records.

149. The other view was that, while there were practical distinctions between payment options, these distinctions should not be seen as exempting some of the contractors from complying with accounting principles and procedures applicable to others. Furthermore, the Authority should retain the right to examine the contractor's accounting records since they would have to contain information and data other than the system of payment, e.g. development costs and other costs borne by the contractor.

150. It was also felt that even if the choice was made to pay only the production charge, it would not be sufficient to create a situation where the Authority would not be empowered to verify how the contractor determined the production charge he would be required to pay. It was further argued that the Authority, in order to dispel any doubts about how the production charge was determined, should have access to all information that goes beyond the quantity of nodules and the average market price of processed metals.

151. In the light of the discussions of opposing views in several sessions of informal consultations, the Chairman intends to prepare a revision of the working paper during the inter-sessional period prior to the summer 1992 meeting of the Preparatory Commission in New York.

9. LOS/PCN/SCN.3/WP.6/Add.8

Draft Regulations on Prospecting, Exploration and Exploitation of Polymetallic Nodules in the Area (Labour, Health and Safety Standards)

152. The document was discussed at six meetings of the Special Commission in which varying views were expressed.

153. According to one view existing conventions adopted under the auspices of the International Maritime Organization and the International Labour Organisation, as well as national legislation on health and safety standards, are adequate to cover activities in the Area and therefore it was not necessary to duplicate the provisions of those conventions in the seabed mining code.

154. On the other hand, it was stated that although existing conventions were relevant, seabed mining would be a unique activity requiring new standards since current ones would not be appropriate in all cases.

155. Following discussions in informal consultations, the Chairman intends to revise the working paper during the inter-sessional period prior to the summer 1992 meeting of the Preparatory Commission in New York.

10. Conclusion

156. The publication of documents LOS/PCN/SCN.3/WP.6/Add.7/Rev.1 and LOS/PCN/SCN.3/WP.6/Add.8/Rev.1 will mark the completion of the preparation and the initial revision by the Secretariat and the Chairman of the Special Commission of all the working papers required to draft the seabed mining code. Whilst progress has been made in identifying and resolving some issues, the Special Commission, has not yet reached final agreement on any of the working papers.

157. There is a general perception that the Special Commission has only limited time available to discharge its mandate in the most effective manner possible. In order to address this fact, a draft final report of the Special Commission will be available for consideration at the summer 1992 meeting of the Preparatory Commission in New York.

V. SPECIAL COMMISSION 4

A. Introduction

Mandate

158. The mandate of the Preparatory Commission is to be taken from its constitutive instrument, namely resolution I. The preamble to the resolution notes the purposes for the fulfilment of which the Commission is established, which are:

> "... to take all possible measures to ensure the entry into effective operation without undue delay of the Authority and the Tribunal and to make the necessary arrangements for the commencement of their functions" (second preambular paragraph).

159. With respect to preparations for the International Tribunal for the Law of the Sea, the mandate is further defined in paragraph 10 of the resolution which states:

> "The Commission shall prepare a report containing recommendations ... regarding practical arrangements for the establishment of the International Tribunal ..."

160. The recommendations concerning the Tribunal would constitute a separate and distinct report and do not form part of the final report prepared by the Preparatory Commission for submission to the Assembly (resolution I, para. 11). The report on the preparatory work regarding the Tribunal is to be submitted to the Meeting of States Parties convened under annex VI, article 4, of the Convention. It should encompass all practical arrangements necessary for the Tribunal to function without undue delay.

161. The requirement for "practical arrangements"* implies that the mandate is more comprehensive than that required for the Authority. It requires recommendations on: the formal structure; the judicial procedure and internal rules; agreements relating to the headquarters; and an international agreement on privileges and immunities. It would extend to such practical arrangements as: the location and site; the evaluation of the building arrangements; and internal administrative, personnel, budgetary, financial and funding requirements. These are the prerequisites for the early and initial functioning of the Tribunal. 22/

---

* Emphasis added.

Agenda and organization of work

162. The provisional agenda adopted by the Special Commission is contained in LOS/PCN/SCN.4/1984/CRP.1 and Rev.1. Its mandate was initially elaborated in LOS/PCN/SCN.4/WP.1 (prepared by the Secretariat). When considering its work programme the Commission first decided to take up the items listed in paragraph 3 of LOS/PCN/SCN.4/WP.1, with the addition of Relationship Agreements as referred to in Part II of that Working Paper. The Commission also expressed the need to prepare rules for the Meeting of States Parties and recommendations for the election of Members of the Tribunal. It did not consider it appropriate to prepare a comprehensive list of issues and items for its programme of work since additional items may be considered necessary as work progressed. For each session of the Preparatory Commission, the requirements for the programme of work were further elaborated as necessary and priorities established by the Special Commission on the recommendation of its Bureau and the initiative of its Chairman. The method of work was also established and the Commission dealt with the items under its work programme on that basis.

B. Status of work

163. The most recent assessment of the status of work in the Special Commission presented at the ninth session in 1991 is contained in document LOS/PCN/SCN.4/1991/CRP.39, which sets out what has been completed and what is yet to be completed.

164. The current status of work in the Special Commission may, for the purpose of convenience, be reviewed under the following items:

1. Judicial procedure

(a) Progress of work

165. The Commission first considered the requirements for the procedural rules of the Tribunal and examined the items listed in LOS/PCN/SCN.4/WP.1. Account was taken of LOS/PCN/SCN.4/1984/CRP.2 to 5 in this connection. Thereafter, the Secretariat was requested to prepare draft procedural rules (LOS/PCN/L.4, para. 10).

Draft rules of the Tribunal (LOS/PCN/SCN.4/WP.2)

166. This working paper was reviewed article by article by the Commission. The Commission also considered some other outstanding matters on which rules could not be formulated until the Commission had first discussed the issues. During the course of this review, the Secretariat was also requested to prepare supplementary draft rules for procedures concerning the prompt release of vessels and crews in relation to article 292 of the Convention (as noted on p. 34 of LOS/PCN/SCN.4/WP.2 and in LOS/PCN/SCN.4/L.1).

Supplement to the draft rules of the Tribunal - on the prompt release of vessels and crews (LOS/PCN/SCN.4/WP.2/Add.1)

167. This working paper was also reviewed article by article by the Special Commission.

Table of concurrence of the draft rules of the Tribunal (LOS/PCN/SCN.4/WP.3)

168. This reference paper was provided by the Secretariat as requested by the Commission for its deliberations on the rules of the Tribunal.

169. The review of these working papers is reflected in the Chairman's summaries of discussions (LOS/PCN/SCN.4/L.2 and Add.1 and Add.1/Corr.1, L.3 and Add.1, L.4 and Add.1, L.5 and Add.1). The Secretariat was requested to prepare a revised draft taking into account the deliberations in the Special Commission, the draft texts proposed for specific provisions (LOS/PCN/SCN.4/1984/CRP.6, LOS/PCN/SCN.4/1985/CRP.7 to 10 and 12 to 14, LOS/PCN/SCN.4/1986/CRP.15 to 18) and the suggestions of a drafting nature; and to provide compromise texts on those issues where no agreement was reached in the Special Commission.

Draft rules of the Tribunal (LOS/PCN/SCN.4/WP.2/Rev.1, Parts I and II) (Revised)

170. The revised working paper was considered by the Special Commission. The deliberations are reflected in the Chairman's summaries of discussions (LOS/PCN/L.7 and Add.1, L.9/Add.1, L.10 and Add.1 and Add.1/Corr.1). The Secretariat has been requested to formulate a final draft of the rules of the Tribunal, taking into account these deliberations, the draft texts proposed for specific provisions (LOS/PCN/SCN.4/1986/CRP.20, LOS/PCN/SCN.4/1987/CRP.22, LOS/PCN/SCN.4/1988/23 and Rev.1, 25, 28 to 30, LOS/PCN/SCN.4/1989/32 and 37), the suggestions of a drafting nature, and to provide compromise texts on those issues where no agreement was reached in this Special Commission. This would be reviewed by the Special Commission if time permits, as decided by the Commission (LOS/PCN/L.53, para. 9).

(b) Pending issues

171. Composition of the Tribunal and its chambers. In connection with the geographical distribution and the representation of the principal legal systems, the Special Commission expressed the view that firm and detailed rules should not be established. However, the principles to be applied in making such determinations would be needed. The Special Commission considered it useful for relevant proposals and recommendations to be made by the Preparatory Commission for consideration by the Meeting of States Parties. The Secretariat was therefore requested to draw up a comparative table regarding the alternatives for distribution of the six additional seats after fulfilling the minimum geographical representation requirement. The Chairman stated that the consideration of the request could be taken up after the consideration of all the issues concerning the composition of the Tribunal was over (LOS/PCN/SCN.4/L.1). This is yet to be concluded.

172. Official working languages of the Tribunal. The official languages and those in which its pleadings and judgements would be issued have yet to be decided. The Special Commission has decided to hold these questions in abeyance, pending consultations which are ongoing. For these reasons the draft rules contain no specific provision in this connection. This pending issue also affects other working papers (LOS/PCN/SCN.4/WP.8 and Add.1 and Corr.1, Add.2 and Corr.1 and 2).

173. Harmonization of jurisprudence. The need to provide a means to achieve harmonization of the jurisprudence of the Tribunal and its chamber was raised. While a proposal was made as to how this can be achieved, no final determination was made by the Special Commission (LOS/PCN/SCN.4/L.3, para. 99).

(c) Other matters

174. Internal judicial practice. As a supplement to the rules, provisions have to be formulated on the internal judicial practice. Rule 21 of the draft rules (LOS/PCN/SCN.4/WP.2/Rev.1/Part I) recognizes the requirement for a resolution to be formulated in this connection, consistent with the practice of the International Court of Justice. The formulation of such a draft resolution is specially important if a phasing-in scheme is adopted where all the Judges are not available at the start-up phase. (See sect. IV below in relation to LOS/PCN/SCN.4/WP.8 and Add.1 and 2 thereto and LOS/PCN/SCN.4/L.7, paras. 27-30.)

175. Access by States not parties to the Convention. A resolution or other means setting out the terms for access to the Tribunal by States not parties to the Convention would have to be formulated. This is consistent with the provision made in connection with the International Court of Justice regarding the participation of States parties to the Statute of the Court which are not States Members of the United Nations as provided in General Assembly resolution 91 (I) of 11 December 1946.

2. International Agreements/Protocols

(a) Progress of work

176. The Commission first discussed the requirements for a headquarters agreement (LOS/PCN/SCN.4/WP.1, para. 7). It also discussed the question of privileges, immunities and facilities in relation to the Tribunal and its work. These discussions took into account the items listed in LOS/PCN/SCN.4/WP.1, paras. 3 and 5 to 7. Account was also taken of LOS/PCN/SCN.4/WP.4, which identifies issues for consideration, and also LOS/PCN/SCN.4/1985/CRP.8 and 9. The summary of this review is contained in the Chairman's summary of discussions (LOS/PCN/SCN.4/L.9). Thereafter, the Secretariat was requested to prepare a draft Headquarters Agreement (LOS/PCN/L.47, paras. 2-3) and a draft instrument on the privileges and immunities of the Tribunal (LOS/PCN/L.53, para. 19 (c)).

Draft headquarters Agreement between the International Tribunal for the Law of the Sea and the Federal Republic of Germany (LOS/PCN/SCN.4/WP.5, Parts I and II)

177. The working paper was reviewed article by article by the Special Commission. The review is reflected in the Chairman's summary of discussions (LOS/PCN/SCN.4/L.11 and Add.1). The Secretariat was requested to prepare a revised draft of the working paper, taking into account the deliberations in the Special Commission and the suggestions of a drafting nature; and to provide compromise texts on those issues where no agreement was reached in the Special Commission.

Revised draft headquarters Agreement between the International Tribunal for the Law of the Sea and the Federal Republic of Germany (LOS/PCN/SCN.4/WP.5/Rev.1 and Corr.1)

178. The revised working paper presented by the Secretariat was considered and approved by the Special Commission. 23/ Taking into account these deliberations, the suggestions of a drafting nature, and providing compromise texts on those issues where no agreement as to the formulation was reached in the Special Commission, the Secretariat has been requested to formulate a final draft of the headquarters Agreement. In doing so, to the extent possible the revised text would be harmonized with the Revised Protocol on Privileges and Immunities of the Tribunal.

Draft Protocol on the Privileges and Immunities of the International Tribunal (LOS/PCN/SCN.4/WP.6)

179. The working paper was reviewed article by article by the Special Commission. The review is reflected in the Chairman's summary of discussions (LOS/PCN/SCN.4/L.13 and Add.1). The Secretariat was requested to prepare a revised draft of the working paper, taking into account the deliberations in the Special Commission, the draft text proposed for specific provisions (LOS/PCN/SCN.4/1989/CRP.31 and 33 to 35), and the suggestions of a drafting nature; and to provide compromise texts on those issues where no agreement was reached (LOS/PCN/L.91, para. 10).

Revised draft Protocol on the Privileges and Immunities of the International Tribunal (LOS/PCN/SCN.4/WP.6/Rev.1 and Corr.1 and 2)

180. The revised working paper presented by the Secretariat was considered and approved by the Special Commission. Taking into account these deliberations, the draft texts proposed for specific provisions (LOS/PCN/SCN.4/1991/CRP.41 to 44), suggestions of a drafting nature, and providing compromise texts on those issues where no agreement as to the formulation was reached, the Secretariat has been requested to formulate a final draft of the Protocol on Privileges and Immunities. In doing so, to the extent possible the revised text would be harmonized with the Revised Headquarters Agreement.

(b) Other matters

181. Laissez-passer. A strong reservation was made by one delegation concerning the use of the United Nations laissez-passer by the Tribunal.

3. Relationship arrangements

(a) Progress of work

Issues concerning relationship agreements between the International Tribunal for the Law of the Sea and other international organizations (LOS/PCN/SCN.4/WP.7)

182. The Commission first discussed the issues contained in this working paper presented by the Secretariat which had been requested by the Special Commission (LOS/PCN/L.61, para. 19 (c)). These discussions took into account the issues listed in LOS/PCN/SCN.4/1989/CRP.36. Thereafter, the Secretariat was requested to prepare a draft Relationship Agreement between the United Nations and the Tribunal, the Principles of Relationship Arrangements between the Tribunal and the Authority, and also the Elements of Supplementary Arrangement between the Tribunal and the International Court of Justice (LOS/PCN/L.76, para. 12 (b); L.81, para. 13; and L.91, para. 17).

Draft relationship arrangement between the United Nations and the International Tribunal for the Law of the Sea (LOS/PCN/SCN.4/WP.9 and Add.1)

183. The working paper was reviewed by the Special Commission as reflected in the Chairman's summary of discussions (LOS/PCN/SCN.4/L.15) and the Secretariat has been requested to provide a revised working paper taking into account these deliberations, the suggestions of a drafting nature, and providing compromise texts on those issues where no agreement was reached. Consideration also needs to be given to the views expressed in the Commission regarding the need for maximum economy in establishing the Tribunal and its functioning while maintaining the highest possible level of efficiency (LOS/PCN/L.86, para. 5). The final draft would be reviewed by the Commission.

Principles governing relationship arrangements between the International Tribunal and the International Seabed Authority (LOS/PCN/SCN.4/WP.10)

184. The working paper was reviewed by the Special Commission and the Secretariat would have to report on the deliberations and suggestions of the Commission.

Supplementary arrangements between the Tribunal and the International Court of Justice

185. The elements of supplementary arrangements between the Tribunal and the International Court of Justice (ICJ) were not formulated in a working paper since the preparation of such a paper was to take into account the views of

ICJ. Consequent upon the communication from the Registrar of ICJ, the Special Commission decided that it would not consider such relationship arrangements and that it would be left to the Tribunal and Court to determine on an ad hoc basis and as appropriate the relationship arrangements that may be required.

(b) Pending issues

186. Budgetary review. The Commission did not reach a conclusion as to whether the Budget of the Tribunal should be submitted for review by the budgetary bodies of the United Nations. No agreement was reached in this connection (LOS/PCN/SCN.4/L.15, p. 11).

187. Coordination of the review by the Plenary of the appropriate Commission and Special Commission 4 of the elements for a relationship arrangement between the Tribunal and the Authority has yet to take place and a determination has to be made as to the drafting of a relationship agreement (LOS/PCN/L.86, para. 9).

4. Administrative arrangements

(a) Progress of work

188. The Special Commission had before it three working papers presented by the Secretariat in response to its requests:

(a) Administrative arrangements, structure and financial implications of the International Tribunal for the Law of the Sea (LOS/PCN/SCN.4/WP.8);

(b) Administrative arrangements, structure and financial implications of the International Tribunal for the Law of the Sea - Addendum: Supplementary cost estimates reflecting alternatives as to official working languages (LOS/PCN/SCN.4/WP.8/Add.1 and Corr.1);

(c) Administrative arrangements, structure and financial implications of the International Tribunal for the Law of the Sea - Addendum: A scheme to phase in the establishment of the International Tribunal for the Law of the Sea (LOS/PCN/SCN.4/WP.8/Add.2 and Corr.1).

189. The first working paper was reviewed by the Special Commission and in doing so the Commission also took into account the addenda to this working paper. These documents have been preliminarily discussed. No conclusions have been reached, particularly regarding the working languages; geographic representation among Members in the alternative schemes for phasing in; and the options as to the initial phases. The consideration of this working paper has not been concluded.

Issues concerning the initial financing and budget of the International Tribunal for the Law of the Sea (LOS/PCN/SCN.4/WP.11)

190. At the request of the Special Commission the Secretariat presented a working paper. The Commission has yet to review this working paper or the issues contained therein.

(b) Pending issues

191. Administrative arrangements. The working paper and its addenda (LOS/PCN/SCN.4/WP.8 and Add.1 and 2) have been preliminarily discussed. No conclusions have been reached, particularly regarding the working languages; geographic representation among members in the alternative schemes for phasing in; and the options as to the initial phases.

192. Control of the budget. There is no agreement in the Special Commission as to which body should control the financing of the Tribunal. A suggestion was that it could be controlled by the Finance Committee of the Authority. The other delegations were opposed to this idea and would prefer a creation of a separate Finance Committee which will be appointed by the Meeting of States Parties. Another suggestion was that the Tribunal follow the practice of other international organizations and the budget be submitted to the United Nations for review by and recommendations of its budgetary bodies such as the Advisory Committee on Administrative and Budgetary Questions.

193. First budget. The Special Commission has yet to discuss the requirements for the first budget of the Tribunal for presentation to the Meeting of States Parties.

194. Scale of assessments. The Special Commission will have to further consider this issue and formulate an interim arrangement pending adoption of a final scale of assessments.

195. Draft financial rules and Staff Regulations. Although the working papers are to be prepared and submitted to the Meeting of States Parties, the principles governing these issues would, however, have to be discussed in the Special Commission for guidance of the Secretariat.

5. Site and building requirements

(a) Progress of work

196. The Commission has before it the reports of the host country on the designation of the site in Hamburg and the progress made in evaluating the requirements and planning for the building and equipment needs of the Tribunal. The relevant documents in this connection are:

(a) Preliminary information on the establishment of facilities for international courts and tribunals (LOS/PCN/SCN.4/1986/CRP.19);

(b) Brief progress report on the preparations for the housing of the International Tribunal for the Law of the Sea in Hamburg - submitted by the delegation of the Federal Republic of Germany (LOS/PCN/SCN.4/L.6);

(c) Second report on practical arrangements for the installation of the International Tribunal for the Law of the Sea at Hamburg - submitted by the delegation of the Federal Republic of Germany (LOS/PCN/SCN.4/L.8);

(d) Report of the Chairman dated 21 March 1988 on the visit of Special Commission 4 and officials of the United Nations Secretariat to the Federal Republic of Germany (LOS/PCN/SCN.4/L.12);

(e) Letter dated 15 March 1989 from the Chairman of the delegation of the Federal Republic of Germany addressed to the Special Representative of the Secretary-General for the Law of the Sea (LOS/PCN/106);

(f) Report of the delegation of the Federal Republic of Germany on the building requirements and facilities for the International Tribunal on the Law of the Sea in Hamburg (LOS/PCN/SCN.4/L.16).

197. The Special Commission has received these reports and has taken note of the arrangements made in this connection. It also took note of the report and the specifications provided in LOS/PCN/SCN.4/L.16, in considering the requirements and facilities for the Seat of the Tribunal.

(b) Pending issues

Building requirements for the Seat of the Tribunal

198. The Special Commission will have to make a final review of the arrangements for inclusion in the report of the Commission to the Meeting of States Parties for its approval. The Special Commission has yet to consider the final arrangements to make its recommendations.

6. Consultations regarding the seat

(a) Progress of work

199. The Chairman of the Special Commission has been conducting consultations on the question concerning the requirement that the host country for the Tribunal should be a party to the Convention by the time of its entry into force, as referred to in paragraph 38 of the Final Act of the Third United Nations Conference on the Law of the Sea. The Commission considered the following:

(a) Informal proposal of the Bureau (LOS/PCN/SCN.4/1986/CRP.21);

(b) Letter dated 16 April 1987 from the Chairman of the Group of 77 addressed to the Chairman of the Preparatory Commission (LOS/PCN/85).

(b) Pending issues

200. Consultations on this question with a view to coming to a generally acceptable solution, would need to be continued and concluded (LOS/PCN/L.96, paras. 8 to 9, LOS/PCN/L.101, para. 8).

7. Rules for meeting of States parties

(a) Progress of work

201. The principles to govern the rules of procedure for the Meeting of States Parties are to be formulated by the Secretariat for inclusion in the report to the Meeting (LOS/PCN/L.81, paras. 15 and 17).

(b) Pending issues

202. The preparation of the required working paper would require an initial review by the Special Commission in order to provide guidance in the preparation of recommendations.

8. Report to the Meeting of States parties

(a) Progress of work

203. The Special Commission has decided that it would consider the form and content of the draft report of the Special Commission containing recommendations on the practical arrangements for the Tribunal to be submitted to the Meeting of States Parties (LOS/PCN/L.81, para. 15).

(b) Pending issues

204. Given the number of documents and issues yet to be reviewed and finalized by the Special Commission, the preparation and consideration of the final report would have to await those conclusions and the finalization of the documents before the report can be prepared and presented to the Plenary for its approval. The Special Commission expressed its wish to finish its programme of work at the next meeting in August 1992 (LOS/PCN/L.101, para. 13).

Notes

1/ LOS/PCN/L.5 of 11 April 1984, "Statement to the Plenary by the Chairman of Special Commission 2 on the progress of work in that Commission".

2/ LOS/PCN/SCN.2/WP.1 of 27 February 1984, "Special Commission for the Enterprise - Mandate and Programme of Work".

Notes (continued)

3/ LOS/PCN/SCN.2/WP.2 of 17 July 1984, "The Enterprise - start-up requirements and preparatory measures". This document, in particular, set forth the full range of considerations.

4/ LOS/PCN/L.40 of 4 September 1986, "Statement to the Plenary by the Chairman of Special Commission 2 on the progress of work in that Commission".

5/ LOS/PCN/L.40 of 4 September 1986, "Statement to the Plenary by the Chairman of Special Commission 2 on the progress of work in that Commission", para. 3.

6/ LOS/PCN/L.65 of 1 September 1988 and LOS/PCN/L.70 of 22 March 1989, "Statement to the Plenary by the Chairman of Special Commission 2 on the progress of work in that Commission".

7/ LOS/PCN/L.92 of 21 March 1991, para. 33.

8/ LOS/PCN/BUR/R.15.

9/ Ibid.

10/ LOS/PCN/L.5 of 11 April 1984, para. 3.

11/ LOS/PCN/L.40.

12/ LOS/PCN/L.65, para. 29.

13/ At the seventh session (1989, Kingston), the Special Commission concluded that considerable progress had been made in understanding the issues involved in dealing more concretely with the question of a nucleus Enterprise. It accepted the idea that the question was best dealt with by means of a transitional arrangement which did not disturb the constitution of the Enterprise as laid down in the Convention, and which was limited to a specified period that might be lengthened or shortened by the Authority depending on the circumstances at the time.

14/ LOS/PCN/L.80 of 30 March 1990, para. 13.

15/ LOS/PCN/L.100 of 11 March 1992, para. 16.

16/ In its consideration of this operational option for the Enterprise, the Special Commission reviewed a number of documents. These were:

(a) LOS/PCN/SCN.2/L.2/Rev.1 and 2 of 10 August 1984 and 21 August 1985, the revised proposal by the delegation of Austria for a "Joint Enterprise for Exploration, Research and Development in Ocean Mining (JEFERAD)", introduced at the second informal meeting during the second session;

Notes (continued)

(b) LOS/PCN/SCN.2/WP.3 of 21 August 1984, containing an "Information note on elements of joint ventures" (second session);

(c) LOS/PCN/SCN.2/WP.4 of 27 August 1984, a "Proposal on a joint venture", made by the delegations of Belgium, France, the Federal Republic of Germany, Italy, Japan, the Netherlands and the United Kingdom;

(d) LOS/PCN/SCN.2/WP.5 of 15 October 1984, "Model Joint Venture Agreement for Seabed Mining", submitted by the Federal Republic of Germany;

(e) LOS/PCN/SCN.2/WP.18 of 9 August 1990, "Draft Basic Joint Venture Contract, Explanatory Memorandum"; and

(f) LOS/PCN/SCN.2/WP.18/Add.1 of 10 August 1990, "Draft Basic Joint Venture Contract".

17/ LOS/PCN/L.10, para. 14, of 4 September 1984, entitled "Statement to the Plenary by the Chairman of Special Commission 2 on the progress of work in that Commission".

18/ LOS/PCN/L.20 of 2 April 1985, paras. 12-14.

19/ LOS/PCN/L.100 of 11 March 1992, para. 29.

20/ LOS/PCN/L.40 of 4 September 1986, para. 4.

21/ LOS/PCN/L.100 of 11 March 1992, para. 9.

22/ The elaboration of practical measures was considered significant in the case of the Tribunal since it has neither a governing assembly nor an executive body entrusted with the task of setting up, monitoring or supervising the activities of the Tribunal. The recommendations made to the meetings of the States Parties to be convened must be comprehensive and viable. They should be of such a nature as to limit the duration of such a plenipotentiary meeting. The meeting is not contemplated as a periodic meeting, except that for the purpose of election of judges it would meet every three years.

23/ The deliberations are to be reflected in the Chairman's summary of discussions, to be issued subsequently.